GSTR 2006/D2 - Goods and services tax: in the application of paragraph (b) of item 3 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999 to a supply, when does 'effective use or enjoyment' of the supply 'take place outside Australia'?

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Draft Goods and Services Tax Ruling

Goods and services tax: in the application of paragraph (b) of item 3 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999* to a supply, when does 'effective use or enjoyment' of the supply 'take place outside Australia'?

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Preamble

This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered, views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners, as it is not a ruling or advice for the purposes of section 37 of the ***Taxation Administration Act 1953****. The final Ruling will be a public ruling for the purposes of section 37 and may be relied upon by any entity to which it applies.*

What this Ruling is about

1. This Ruling examines the circumstances in which the effective use or enjoyment of a supply takes place outside Australia for the purposes of paragraph (b) of item 3 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). It is only necessary to consider whether paragraph (b) of item 3 is satisfied if paragraph (a) of item 3 is satisfied.[1]

2. Subsection 38-190(1) sets out supplies of things (other than goods or real property) that are GST-free. Under item 3 supplies of things (other than goods or real property) made to an entity are GST-free if the requirements of that item are met. Unlike item 2 of the table in subsection 3- 190(1), item 3 is not restricted to non-resident entities and applies to an entity irrespective of its residence status.

3. In this Ruling we explain in particular:

- how to determine the entity that uses or enjoys the supply;

[1] Refer to GSTR 2004/7 which explains when the requirement in paragraph (a) of item 3, (supply is made to a recipient who is not in Australia when the thing supplied is done) is satisfied.

- when effective use or enjoyment of a supply by that entity takes place, or does not take place, outside Australia; and
- what apportionment is required if effective use or enjoyment of the supply takes place outside Australia for part of the time.

4. We give many examples illustrating the application of paragraph (b) of item 3. The examples are not in themselves statements of principles to be applied generally. The examples show how, by examining the facts and circumstances of the supply in question, you can determine the entity that effectively uses or enjoys the supply and where effective use or enjoyment of that supply takes place.

5. We also discuss and illustrate in this Ruling the application of paragraph (b) of item 3 to certain subcontract and global supply arrangements.

6. As item 3 applies to supplies made to all entities, including non-residents, supplies made to non-residents may be considered under item 2 or item 3. The GST treatment is typically the same under both items taking into account the application of subsection 38-190(3) to item 2 supplies. To illustrate that this is the case, we include in this Ruling examples drawn from GSTR 2005/6[2] and compare the outcomes under items 2 and 3. However, in circumstances where subsection 38-190(3) does not apply to the supply covered by item 2, the effect of paragraph (b) of item 2 may be that a supply is GST-free under item 2 but that same supply is not GST-free under item 3. This is because there is no paragraph (b) equivalent under item 3. (See Example 34 at page 93).

7. Where relevant this Ruling also makes mention of subsection 38-190(4). However, this Ruling does not otherwise address the operation of the provisions of subsection 38-190(1).

8. Unless otherwise stated, all legislative references in this Ruling are to the GST Act and all references to an item number are to an item in the table in subsection 38-190(1).

Date of effect

9. This draft Ruling represents the preliminary, though considered view of the Australian Taxation Office. This draft may not be relied on by taxpayers or practitioners. When the final Ruling is officially released, it will explain our view of the law as it applies from 1 July 2000.

[2] Goods and services tax: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*.

10. The final Ruling will be a public ruling for the purposes of section 37 of the *Taxation Administration Act 1953* and may be relied upon, after it is issued, by any entity to which it applies. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

11. If the final public ruling conflicts with a previous private ruling that you have obtained, the public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of the final public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of effect of the later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Background

12. Once finalised, this Ruling will be the last in a series of foundation rulings published by the ATO on the interpretation and application of section 38-190 as enacted and effective from 1 July 2000.

13. The other related foundation rulings, already finalised, are listed below.

Related Rulings

14. There are a suite of other GST public rulings which explain the operation of section 38-190. These rulings are:

Public Ruling No.	Title: Goods and services tax:
GSTR 2003/7	what do the expressions 'directly connected with goods or real property' and 'a supply of work physically performed on goods' mean for the purposes of subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*?
GSTR 2003/8	supply of rights for use outside Australia – subsection 38-190(1), item 4, paragraph (a) and subsection 38-190(2)
GSTR 2004/7	in the application of items 2 and 3 and paragraph (b) of item 4 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*: when is a 'non-resident' or other 'recipient' of a supply 'not in Australia when the thing supplied is done'? when is 'an entity that is not an Australian resident' 'outside Australia when the thing supplied is done'?
GSTR 2005/2 (replacing GSTR 2003/2)	supplies of goods and services in the repair, renovation, modification or treatment of goods from outside Australia whose destination is outside Australia

Public Ruling No.	Title: Goods and services tax:
GSTR 2005/6	the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*

15. GSTR 2005/6, which discusses the application of subsection 38-190(3), is particularly relevant to this Ruling in two respects. First, GSTR 2005/6 discusses when a supply is provided to another entity. This is relevant to this Ruling in determining the entity that effectively uses or enjoys the supply. Secondly, GSTR 2005/6 explains when a supply is provided to that other entity in Australia. This is relevant to this Ruling in determining whether effective use or enjoyment of a supply takes place outside Australia. GSTR 2005/6 is therefore referred to throughout this Ruling.

How to read this Ruling

16. In the Ruling section we set out in summary form what you need to consider to determine whether effective use or enjoyment of a supply takes place outside Australia for the purposes of paragraph (b) of item 3 (paragraphs 30 to 146, pages 7 to 28).

17. This includes four flowcharts which summarise the application of paragraph (b) of item 3 as explained in the Ruling section (pages 29 to 32).

18. If you require a more detailed analysis and explanation of the issues covered in the Ruling section, you should refer to the Explanation section. That section commences with a discussion of item 3 and some policy considerations underlying item 3. This is followed by a detailed explanation of the operation of paragraph (b) of item 3. For ease of reference, we have divided the detailed explanation into seven separate parts set out below.

19. It is important to understand the significance of Part I in particular. In that part we explain why we have taken the approach used in this Ruling to determine where effective use or enjoyment of a supply takes place. Parts II to IV inclusive explain how to apply our approach in determining where effective use or enjoyment of a supply takes place. We set out in Part V examples drawn from GSTR 2005/6 and demonstrate that the GST treatment of a supply made to a non-resident who is not in Australia when the thing supplied is done is the same under items 2 and 3 taking into account the operation of subsection 38-190(3) and paragraph (b) of item 3 respectively. In Part VI, we discuss apportionment and in Part VII we consider the application of paragraph (b) of item 3 to certain complex arrangements.

PART	TOPIC
Part I *(paragraphs 161 to 190)*	Our approach to determining where effective use or enjoyment of a supply takes place.
Part II *(paragraphs 191 to 254)*	How to identify the entity (or entities) that effectively uses or enjoys the supply (applying our approach as explained in Part I).
Part III *(paragraphs 255 to 385)*	Determining whether effective use or enjoyment of a supply by an individual takes place outside Australia (applying our approach as explained in Part I).
Part IV *(paragraphs 386 to 448)*	Determining whether effective use or enjoyment of a supply by a company, partnership, corporate limited partnership or trust takes place outside Australia (applying our approach as explained in Part I).
Part V *(paragraphs 449 to 451)*	The GST treatment of various supplies under item 3 (and item 2 for comparative purposes) drawing on examples from GSTR 2005/6.
Part VI *(paragraphs 452 to 527)*	When apportionment may be required.
Part VII *(paragraphs 528 to 600)*	The application of paragraph (b) of item 3 to subcontract arrangements and global supplies.

Legislative context

20. Under section 9-5 of the GST Act a supply is not a taxable supply to the extent that it is GST-free or input taxed.

21. A supply is GST-free if it is GST-free under Division 38 or under a provision of another Act.[3]

22. Subdivision 38-E sets out when exports of goods and other supplies for consumption outside Australia are GST-free. The Subdivision comprises:

- section 38-185 – exports of goods;
- section 38-187 – lease or hire of goods for use outside Australia;
- section 38-188 – tooling used by non-residents to manufacture goods for export; and
- section 38-190 – supplies of things, other than goods or real property, for consumption outside Australia.

[3] Paragraph 9-30(1)(a).

23. The relevant section for the purposes of this Ruling is section 38-190.

24. Subsection 38-190(1) comprises five items which set out supplies of things, other than goods or real property, that are GST-free. A supply that is not GST-free under one item in subsection 38-190(1) may be GST-free under one of the other items. If the requirements of one of those items are met, the supply is GST-free, provided subsection 38-190(2), (2A) or (3) does not negate that GST-free status.

25. Subsection 38-190(2) provides that a supply covered by any of items 1 to 5 in the table in subsection 38-190(1) is not GST-free if it is the supply of a right or option to acquire something the supply of which would be connected with Australia and would not be GST-free.[4]

26. Subsection 38-190(2A) provides that a supply covered by any of items 2 to 4 in the table in subsection 38-190(1) is not GST-free if the acquisition of the supply relates (whether directly or indirectly, or wholly or partly) to the making of a supply of real property situated in Australia that would be, wholly or partly, input taxed under Subdivision 40-B or 40-C.

27. Subsection 38-190(3), which is expressed to not limit subsection 38-190(2) or (2A), provides that a supply covered by item 2 is not GST-free if:

(a) it is a supply under an agreement entered into, whether directly or indirectly, with a non-resident; and

(b) the supply is provided, or the agreement requires it to be provided, to another entity in Australia.

28. Subsection 38-190(4), (in contrast to subsection 38-190(3) as it applies to item 2), extends the scope of item 3. Subsection 38-190(4) provides that a supply is taken, for the purposes of item 3, to be a supply made to a recipient who is not in Australia if:

(a) it is a supply under an agreement entered into, whether directly or indirectly, with an Australian resident; and

(b) the supply is provided, or the agreement requires it to be provided, to another entity outside Australia.

29. This Ruling is about determining when, for the purposes of paragraph (b) of item 3, effective use or enjoyment of a supply takes place outside Australia. The expression appears in item 3 in the table in subsection 38-190(1) as follows:

[4] See GSTR 2003/8 which explains the operation of subsection 38-190(2).

Supplies of things, other than goods or real property, for consumption outside Australia		
Item	**Topic**	**These supplies are GST-free**[5]
3	Supplies used or enjoyed outside Australia	a supply: (a) that is made to a recipient who is not in Australia when the thing supplied is done; and (b) the **effective use or enjoyment** of which takes place outside Australia; [emphasis added] other than a supply of work physically performed on goods situated in Australia when the thing supplied is done, or a supply directly connected with real property situated in Australia.

Ruling

Item 3

30. A supply of a thing (other than goods or real property) is GST-free under item 3 if:

(a) the recipient entity is not in Australia when the thing supplied is done;[6] and

(b) the effective use or enjoyment of the supply takes place outside Australia; and

the supply is neither a supply of work physically performed on goods situated in Australia when the work is done nor a supply directly connected with real property situated in Australia.[7]

31. This Ruling focuses on the requirement that for a supply to be GST-free under item 3 the effective use or enjoyment of the supply must take place outside Australia. (However, it is only necessary to consider paragraph (b) of item 3 if an entity satisfies paragraph (a) of item 3.)

32. To work out whether effective use or enjoyment of a supply takes place outside Australia we take a two step approach. First, we determine the entity that uses or enjoys the supply (see paragraphs 35 to 65). Then we determine whether effective use or enjoyment of the supply by that entity takes place outside Australia (see paragraphs 66 to 108). This approach is summarised in flowchart form at pages 29 to 32.

33. Sometimes as a result of the application of paragraph (b) of item 3, apportionment arises (refer paragraphs 117 to 126).

[5] Except to the extent that they are supplies of goods or real property.
[6] Refer to GSTR 2004/7 which explains when an entity is not in Australia for the purposes of paragraph (a) of item 3.
[7] Refer to GSTR 2003/7 which explains the application of this requirement.

34. Using this two step approach, we discuss at paragraphs 127 to 140 how paragraph (b) of item 3 applies to subcontract arrangements and global supplies.

Determining the entity that uses or enjoys the supply

35. A supply may be made and provided to the same entity, or may be made to one entity but be provided to another entity (or entities) (such circumstances are provided for in the legislation by subsections 38-190(3)[8] and (4)[9]).

36. If a supply is made to one entity but is provided to another entity both subsections 38-190(3) and (4) focus on the location of that other entity (that is the entity to which the supply is provided) for the purposes of determining whether the supply is consumed in Australia or outside Australia and thus whether or not the supply is GST-free.

37. We therefore consider that to work out whether a supply is effectively used or enjoyed outside Australia (that is treated as consumed outside Australia), as required by the test in paragraph (b) of item 3, it is necessary to identify the entity to which the supply is provided. It is this entity that has the real or actual effective use or enjoyment of the supply. The entity to which the supply is provided may be the same entity to which the supply is made (that is the recipient) or it may be a different entity (or entities). (See Flowchart 1, page 29.)

How to determine whether a supply, which is made to one entity (that is the recipient), is provided to another entity

38. We determine whether a supply is made to one entity but provided to another entity in the same way as it is determined in GSTR 2005/6.[10] That Ruling explains when a supply is provided to another entity for the purposes of subsection 38-190(3). As explained in that Ruling it is necessary to establish the character and the nature of the supply.[11]

Characterisation of the supply

39. Before it can be determined whether a supply is provided (or is required to be provided) to another entity, it is essential that the supply be properly characterised as the supply of a service, right or some other thing. It is only when the supply is properly characterised

[8] See GSTR 2005/6.
[9] See paragraphs 186 to 197 in GSTR 2004/7.
[10] Goods and services tax: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*.
[11] See paragraphs 66 to 82 and 261 to 322 in GSTR 2005/6.

that it is possible to determine whether that supply is provided to another entity.

40. In characterising a supply it is necessary to consider all the circumstances of the transaction to ascertain its essential character.

41. Further explanation and examples about characterising a supply are provided at paragraphs 201 to 203, Part II of the Explanation section.[12]

The nature of the supply

42. It is also necessary to establish the exact nature of the supply to determine to which entity that service or thing is provided. That is, it is necessary to establish what is really being supplied.

43. A clear understanding of the exact nature of the supply is essential to determining whether that supply is provided to another entity. It is only by having regard to what is in substance and reality being supplied that it is possible to identify to which entity that supply is provided.

44. The exact nature of a supply in any given situation depends on the facts and circumstances of the supply and the agreement made between the parties. In this regard, it is necessary to look at the whole arrangement for the supply (including the contractual arrangements) and the way in which the supply is carried out.

45. If there is no written contract, other documents such as correspondence between the parties may be useful in establishing the nature of the supply.

46. Thus, the focal point in working out whether a supply is provided to another entity is the facts and circumstances of the doing of the thing supplied. By the supplier examining what it is required to do and in what circumstances, the supplier is able to objectively determine to whom the supply is provided.

47. In some instances, it is inherent in the nature of the supply that the supply is to be provided to a particular entity. For example travel, training or entertainment services are, by their very nature, provided to the individual that travels, or is trained or entertained respectively.

48. In the case of delivery or freight services, where goods from one entity are addressed for delivery to another entity, we consider that the delivery or freight services are provided to that addressee entity.[13] See Example 11 (paragraphs 333 to 346, Part III, of the

[12] See also paragraphs 261 to 275 in GSTR 2005/6.

[13] This does not, however, include the delivery of goods that are generically addressed, for example, to 'The Householder' or are for delivery to the public at large. It also does not include the situation where an entity's goods are simply freighted or moved from one location to another location. In that case the circumstances of the particular supply in question must be considered to determine whether the supply is provided to another entity.

Explanation section) for delivery or freight services provided to an individual. See Example 20 (paragraphs 426 to 441, Part IV, of the Explanation section) for delivery or freight services provided to an entity other than an individual. Example 12 (paragraphs 347 to 352, Part III, of the Explanation section) illustrates the outcome if a resident company contracts another Australian entity to deliver goods to the public at large outside Australia. (See also Examples 31 and 32, Table 1, page 92 and Examples 57 and 58, Table 2, pages 104 and 105 respectively in Part V of the Explanation section.)

49. In the case of other supplies, for example, supplies that involve the supply of legal, accounting, auditing or advertising services, the question of whether the supply is provided to another entity depends on the facts and circumstances in any given case.

50. If a supply is the provision of advice or information which involves work to create, develop or produce that advice or information, (for example, a legal opinion or an audit report), the supply is the performance of services.[14] Thus, in determining whether a supply is provided to another entity regard is to be had to the performance of the services in creating, developing or producing the opinion or audit report and whether those services are provided to another entity.

51. For example, consider the supply of auditing services to a resident parent company that has a subsidiary in New Zealand. If services effecting compliance by the New Zealand subsidiary with its legal or reporting obligations are being supplied, the supply is provided to the New Zealand subsidiary. On the other hand, if services effecting compliance by the resident parent company with its legal or reporting obligations are being supplied, the supply is provided to the resident parent company. (Refer Examples 36 and 37, Table 2, pages 94 and 95 respectively, Part V of the Explanation section.)

52. In situations where the contractual flow of the supply is to an entity, (other than an individual), and it is necessary to determine whether the actual flow of the supply is to another entity (other than an individual), we consider that a strong indicator that the supply is provided to another entity is that the contracting entity has no further interaction with, or participation in, the provision of the supply beyond contracting and paying for the supply. However, this is subject to the facts and circumstances of the supply not indicating to the contrary. (Refer Examples 40 and 50, Table 2, pages 96 and 101 respectively, Part V of the Explanation section.)

53. It is only in limited circumstances that any one fact, or combination of facts, means or indicates that a supply is provided to another entity. Accordingly, we give many examples in this Ruling and GSTR 2005/6 which illustrate when a supply is provided to an

[14] As explained in GSTR 2000/31 if a supply is the provision of advice or information and the supply involves work to create, develop or produce that information or advice for the recipient, the supply is one of performance of services.

entity other than the recipient (that is, the entity to which the supply is made).[15]

54. The examples are not in themselves statements of principles to be applied generally. The examples illustrate when we consider a supply is provided to another entity in a given fact situation. In particular, the examples show how, by examining the facts and circumstances of the supply in question, you can determine whether that supply is provided to the recipient entity or to another entity. It is always the entity to which the supply is provided that is the relevant entity for the purposes of determining where effective use or enjoyment of the supply takes place.

55. Further explanation and examples are provided at paragraphs 191 to 254, Part II of the Explanation section.

Determining whether a supply made to an employer is provided to an employee

56. To determine whether a supply, which is made to an employer, is provided to an employee it is essential to examine the nature of the supply closely. By examining what is really being supplied and how that supply is carried out, it is possible to establish to whom the service or other thing is provided, that is, the employer or another entity, the employee. If the supply is provided to the employee, it is the employee that is the relevant entity for the purposes of determining where effective use or enjoyment of that supply takes place.

57. Where an employee is involved with the provision of a supply, the weight to be given to that fact differs according to the circumstances of the supply in question. On the one hand interaction between the supplier and the employee may indicate the supply is provided to the employee; for example, an accounting firm is preparing an employee's income tax return as contracted for by the employer. In this circumstance the fact that the employee has contact with the supplier strongly indicates, in the circumstances of the supply, that the supply is provided to that employee. On the other hand, contact by an employee with a supplier is of little relevance in circumstances where the employee's involvement with the provision of the supply is simply to facilitate the provision of the supply to the employer. This is the case where, for example, an employee interacts with a law firm in circumstances where the firm is providing legal advice concerning a business venture of the employer.

58. In each of the following examples, the supply is made to the employer but is, in our view, provided to the employee. The employee is therefore the relevant entity for the purposes of determining where

[15] We summarise many of the examples from GSTR 2005/6 in two tables in Part V of the Explanation section of this Ruling. See Table 1 (pages 89 to 95) for examples which illustrate when the supply is provided to an individual. See Table 2 (pages 96 to 106) for examples which illustrate when the supply is provided to an entity other than an individual. For each example we compare the outcomes under items 2 and 3.

effective use or enjoyment of the supply takes place. The examples are as follows:

- the employer contracts with an entity to provide training to its employees. See Example 9, paragraphs 316 to 321, Part III, and Examples 26 and 27, Table 1, pages 89 and 90 respectively, Part V, of the Explanation section;
- the employer purchases tickets to entertainment or sporting events for its employees. See Example 9, paragraphs 316 to 321, Part III, and Example 23, Table 1, page 88, Part V, of the Explanation section;
- the employer contracts with an entity to provide travel services to its employees. See Example 9, paragraphs 316 to 321, Part III, of the Explanation section;
- the employer contracts with an accounting firm to provide tax return preparation services to its employees. See Example 7, paragraphs 300 to 306, Part III, of the Explanation section; and
- the employer contracts for an employee's goods to be stored. See Example 24, Table 1, page 88, Part V, of the Explanation section.

Determining whether a supply is provided to an agent

59. Sometimes an entity makes an acquisition through an agent. If all the agent does is to arrange on behalf of the entity for the supply to be made and provided to the entity, the supply is not provided to the agent.[16] (See Example 22, Table 1, page 87, Part V of the Explanation section.)

Determining whether a supply is provided to a partner

60. A partnership, although not a separate legal entity from the persons that form the partnership, is treated, for GST purposes, as if it were a separate entity.[17] Typically, partners in a partnership are individuals and companies and, therefore, a supply may be made to a partnership but may be provided to, for example, an individual partner.

61. Referring to the examples listed at paragraph 58, just as the supplies contracted for by an employer are provided to the employee so too are such supplies contracted for by the partnership in respect of the partners provided to an individual partner. The partner would therefore be the relevant entity for the purposes of determining where

[16] See paragraphs 471 to 481 in GSTR 2005/6 for a discussion regarding supplies provided to agents.
[17] Refer to paragraph 184-1(1)(e).

effective use or enjoyment of the supply takes place. (Compare Example 28, page 90, Table 1 with Example 38, page 95, Table 2, Part V, of the Explanation section.)

The supply is made and provided to the same entity

62. If it is determined that a supply is made and provided to the same entity, that entity (that is, the recipient) is the relevant entity for the purposes of determining whether effective use or enjoyment of the supply takes place outside Australia. (See Flowchart 1 on page 29.)

63. That entity must satisfy paragraphs (a) and (b) of item 3 if the supply is to be GST-free under item 3.[18]

The supply is made to one entity but is provided to another entity

64. If, however, a supply is made to one entity (that is the recipient) but is provided to another entity, the entity to which the supply is provided is the relevant entity for the purposes of determining whether effective use or enjoyment of the supply takes place outside Australia. (See Flowchart 1 on page 29.)

65. If the supply is to be GST-free under item 3, the entity to which the supply is made must satisfy paragraph (a) of item 3 and the entity to which the supply is provided must satisfy paragraph (b) of item 3.[19]

How to determine whether effective use or enjoyment of the supply by the entity to which the supply is provided takes place outside Australia

66. Having determined the entity that effectively uses or enjoys the supply (that is, the entity to which the supply is provided), it is then necessary to consider where effective use or enjoyment of the supply by that entity takes place.

67. We consider that effective use or enjoyment of a supply by an entity takes place outside Australia, if provision of the supply is to that entity outside Australia. Effective use or enjoyment of a supply does not take place outside Australia, if provision of the supply is to that entity in Australia. In this Ruling we determine whether there is provision of a supply to the entity in Australia consistent with the approach in GSTR 2005/6. Therefore, the explanation and examples in GSTR 2005/6 may also be referred to for the purposes of determining whether a supply is provided to an entity in Australia.

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[18] The supply must also satisfy the other requirements of item 3. That is, it must not be a supply of work physically performed on goods situated in Australia when the thing supplied is done, or a supply directly connected with real property situated in Australia.

[19] Ibid.

68. We explain below (paragraphs 70 to 72) when provision of a supply to an entity occurs as this is the relevant time for determining whether there is provision of the supply to the entity in Australia or outside Australia and therefore whether effective use or enjoyment of the supply takes place in or outside Australia. Effective use or enjoyment of a supply takes place as and when the thing supplied is done, which is consistent with the legislative framework in section 38-190, and in particular, items 2 and 3 and paragraph (b) of item 4.

69. We then explain when a supply is provided to an entity in Australia or outside Australia for the purposes of determining whether effective use or enjoyment of the supply takes place outside Australia. (See paragraphs 73 to 94 if the supply is provided to an individual; see paragraphs 95 to 108 if the supply is provided to an entity other than an individual.)

Provision of the supply occurs as and when the thing supplied is done

70. A supply is provided as and when the thing supplied is done. This is the relevant time for determining whether a supply is provided to an entity in Australia or outside Australia and thus whether effective use or enjoyment of the supply takes place outside Australia.

71. Consistent with the views expressed in GSTR 2004/7[20] and GSTR 2000/31[21] as to when the thing supplied is done we consider that:

- *if the thing provided is a service* – the provision of that service occurs during the period of time when the service is performed;
- *if the thing provided is advice or information and the supply involves work to create, develop or produce that information or advice for the other entity* – the thing provided is the performance of services. The provision of that thing occurs when the service is performed and includes the period of time during which the advice is prepared, produced or created, as the case may be;
- *if the thing provided is an instantaneous provision of advice or information* – the provision of that thing occurs at the time at which the advice or information is instantaneously provided;
- *if the thing provided is the creation, grant, transfer, assignment or surrender of a right* – the provision of

[20] Goods and services tax: in the application of items 2 and 3 and paragraph (b) of item 4 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*: when is a 'non-resident' or other 'recipient' of a supply 'not in Australia when the thing supplied is done'? when is 'an entity that is not an Australian resident' 'outside Australia when the thing supplied is done'?

[21] Goods and services tax: supplies connected with Australia.

that thing occurs at the time that the right is created, granted, transferred, assigned or surrendered; and

- *if the thing provided is the entry into, or release from, an obligation to do anything, or refrain from an act, or to tolerate an act or situation* – the provision of that thing occurs at the time at which the obligation is entered into or the release is affected.

72. In the case of a service performed over time, for example, provision of advice or information created, developed or produced over time, the relevant period for determining whether any part of the supply is provided to an entity in Australia or outside Australia, (and thus effectively used or enjoyed in Australia or outside Australia respectively), is the period during which the advice or information is created, developed or produced.

When effective use or enjoyment of a supply by an individual takes place outside Australia

73. To determine whether effective use or enjoyment of a supply by an individual takes place outside Australia we determine whether there is *provision of the supply to the individual in Australia or outside Australia*. Only where there is provision of a supply to an individual outside Australia does effective use or enjoyment take place outside Australia.

74. To determine whether there is provision of a supply to an individual in Australia or outside Australia we distinguish between resident and non-resident individuals, according to whether they are physically in or outside Australia when the thing supplied is done. Distinguishing between individuals on the basis of their residency status and physical presence at a location is consistent with the approach taken for individuals in GSTR 2004/7 and GSTR 2005/6.

Resident individual physically in Australia when the thing supplied is done

75. If a supply is provided (or is required to be provided) to a resident individual who is physically in Australia when the thing supplied is done, the supply is provided to that individual in Australia.

76. As the supply is provided to the individual in Australia, effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3. (See Flowchart 2, page 30.)

Resident individual not physically in Australia when the thing supplied is done

77. If a supply is provided (or is required to be provided) to a resident individual who is not physically in Australia when the thing

supplied is done, it is necessary to determine whether the presence of the resident individual outside Australia is integral to, as distinct from being merely coincidental with, the provision of the supply. (We explain at paragraphs 87 to 94 when a resident individual's presence outside Australia is integral to the provision of the supply.)

78. If a resident individual's presence outside Australia is integral to, as distinct from being merely coincidental with, the provision of the supply, we consider that the supply is provided to that individual outside Australia. As the supply is provided to the individual outside Australia effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is satisfied. The supply is GST-free under item 3 if the other requirements of item 3 are satisfied.

79. Conversely, if a resident individual's presence outside Australia is not integral to the provision of the supply, we consider that the supply is provided to the individual in Australia. As the supply is provided to the individual in Australia, effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3. (See Flowchart 2, page 30.)

80. Apportionment is required if, for part of the time when the thing supplied is done, a resident individual is physically outside Australia and that individual's presence outside Australia is integral to the provision of the supply. That part of the otherwise taxable supply[22] is GST-free. Apportionment is discussed at paragraphs 117 to 126.

Non-resident individual not physically in Australia when the thing supplied is done

81. If a supply is provided (or is required to be provided) to a non-resident individual who is not physically in Australia when the thing supplied is done, the supply is provided to that individual outside Australia.

82. As the supply is provided to the individual outside Australia, effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is therefore satisfied and the supply is GST-free under item 3 if the other requirements of item 3 are satisfied. (See Flowchart 3, page 31.)

Non-resident individual physically in Australia when the thing supplied is done

83. If a supply is provided (or is required to be provided) to a non-resident individual who is physically in Australia when the thing supplied is done, it is necessary to determine whether the presence of the non-resident individual in Australia is integral to, as distinct from being merely coincidental with, the provision of the supply. (We

[22] Assuming that the requirements of section 9-5 are otherwise satisfied.

explain at paragraphs 87 to 94 when a non-resident individual's presence in Australia is integral to the provision of the supply.)

84. If a non-resident individual's presence in Australia is integral to, as distinct from being merely coincidental with, the provision of the supply, we consider that the supply is provided to that individual in Australia. As the supply is provided to the individual in Australia, effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.

85. Conversely, if a non-resident individual's presence in Australia is not integral to the provision of the supply, we consider that the supply is not provided to that individual in Australia; it is provided to the non-resident individual outside Australia. As the supply is provided to the non-resident individual outside Australia, effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is therefore satisfied and the supply is GST-free under item 3 if the other requirements of item 3 are satisfied. (See Flowchart 3, page 31.)

86. Apportionment is required if, for part of the time when the thing supplied is done, a non-resident individual is physically in Australia and that individual's presence in Australia is integral to the provision of the supply. That part of the otherwise GST-free supply is a taxable supply.[23] Apportionment is discussed further at paragraphs 117 to 126.

How to determine whether an individual's presence at a particular location (that is outside Australia if a resident or in Australia if a non-resident) is integral to the provision of a supply

87. It is necessary to consider this section if a supply is provided to:

- a resident individual who is physically outside Australia when the thing supplied is done;[24] or
- a non-resident individual who is physically in Australia, when the thing supplied is done.[25]

88. A supply is provided to an individual at a particular location (that is, outside Australia if a resident or in Australia if a non-resident), if the individual's presence at that location is integral to the provision of the supply as distinct from being merely coincidental with the provision of the supply.

89. Determining whether an individual's presence at a particular location is integral to the provision of the supply requires an examination of the facts and circumstances of the supply. However,

[23] Assuming that the requirements of section 9-5 are otherwise satisfied.
[24] See paragraphs 77 to 79.
[25] See paragraphs 83 to 85.

some indicators that an individual's presence at a particular location is integral to the provision of the supply, and is not merely coincidental, include:

- the need for the supply arises from the individual's presence at that location; or
- the presence of the individual at that location is integral to the performance, receipt or delivery of the supply.

90. Some examples of supplies where the need for the supply arises from an individual's presence at a particular location are as follows:

- a supply of immigration advice to a non-resident individual who wants to extend his or her stay in Australia;
- a supply of customs broker services to a non-resident individual who is in Australia and requires the services of a customs broker to enter goods for home consumption in Australia;
- a supply of legal services which are provided to an individual at a location in relation to an offence committed by that individual while at that location (see Examples 4 (paragraphs 286 to 290), 5 (paragraphs 291 to 296) and 6 (paragraphs 297 and 298), Part III of the Explanation section; and
- a supply of repair services which are provided to an individual at a location to repair a piece of equipment (for example a laptop, including software) while at that location.

91. Some examples of supplies where the presence of the individual at that location is integral to the performance, receipt or delivery of the supply, are as follows:

- supply of training or entertainment – the services are to be received by the individual at that location (see Example 9, paragraphs 316 to 321, Part III of the Explanation section);
- supply of travel – the travel is to be undertaken by the individual at that location (see Example 9, paragraphs 316 to 321, Part III of the Explanation section);
- supply of hairdressing or other similar services applied to the person – the services are to be performed on the individual at that location;
- supply of assessment services – the assessment of the individual is undertaken at that location and the individual is required to be present for the assessment.

92. The following are examples or circumstances in which we consider that the individual's presence at a particular location is not integral to the provision of the supply:

- while a resident individual is on holiday outside Australia, the individual has repairs carried out on his or her car in Australia;
- while a resident individual is on holiday outside Australia the individual has his or her tax return prepared and lodged in Australia (see Example 14, paragraphs 361 to 366, Part III of the Explanation section);
- a service is provided to an individual who is a resident of Australia and, during the period when those services are performed, the individual goes overseas on holiday. While on holiday outside Australia the resident individual checks on the progress of the supply of services or the supplier contacts the resident individual to update the individual on the progress. The need for the supply does not arise from the individual's presence outside Australia and the individual's presence outside Australia is not integral to the performance, receipt or delivery of the supply (a similar example is Example 25, Table 1, page 89, Part V of the Explanation section); and
- a service is provided to an individual who is a non-resident and, during the period when those services are performed, the individual comes to Australia on holiday. While on holiday in Australia the non-resident individual takes the opportunity to visit the supplier to check on the progress of the supply of services or the supplier contacts the non-resident individual to update the individual on the progress. The need for the supply does not arise from the non-resident individual's presence in Australia and the individual's presence in Australia is not integral to the performance, receipt or delivery of the supply. (A similar example is Example 24, Table 1, page 88, Part V of the Explanation section.)

93. In the case of delivery or freight services which are provided to an individual in the circumstances described at paragraph 48, we accept those services are provided to that individual in Australia, if the goods are addressed to that individual in Australia. Alternatively, if the goods are addressed to the individual outside Australia, we accept that those services are provided to that individual outside Australia. This outcome is not dependent upon the residency status of the

individual to whom the goods are addressed.[26] (See Example 11, paragraphs 333 to 346, Part III; and Examples 31 and 32, Table 1, page 92, Part V; of the Explanation section which illustrates this approach.)

94. Further explanation and examples about whether an individual's presence at a particular location is integral to the provision of a supply or is merely coincidental are provided at paragraphs 280 to 376, Part III of the Explanation section.

When effective use or enjoyment of a supply by a company, partnership, corporate limited partnership or trust takes place outside Australia

95. To determine whether effective use or enjoyment of a supply by a company, partnership, corporate limited partnership or trust takes place outside Australia we determine whether there is provision of the supply to that entity in Australia or outside Australia. Only where there is provision of a supply to an entity outside Australia does effective use or enjoyment take place outside Australia.

96. To determine whether there is provision of a supply to a company, partnership, corporate limited partnership or trust in Australia or outside Australia we consider whether that entity has a presence in Australia.

97. If a company, partnership, corporate limited partnership or trust does not have a presence in Australia (that is it only has a presence outside Australia) the supply is provided to that entity outside Australia and effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is satisfied and the supply is GST-free under item 3 if the other requirements of item 3 are satisfied.

98. If a company, partnership, corporate limited partnership or trust only has a presence in Australia (that is it has no presence such as a branch office outside Australia) the supply is provided to that entity in Australia and effective use or enjoyment of the supply takes place in Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.

Determining whether a company, partnership, corporate limited partnership or trust has a presence in Australia

99. Unlike an individual, a company, partnership, corporate limited partnership or trust can be present both in Australia and outside Australia at the same time.

100. A *company, corporate limited partnership or trust* is in Australia (irrespective of its residency status) if the entity carries on

[26] This does not, however, include the delivery of goods that are generically addressed to 'The Householder' or are for delivery to the public at large. See Example 12, paragraphs 347 to 352, Part III of the Explanation section.

business (or in the case of an entity that does not carry on business, carries on activities) in Australia at or through a fixed and definite place of its own, or through an agent at a fixed and definite place, for a sufficiently substantial period of time.[27]

101. Additionally a *company or corporate limited partnership* is in Australia if it is incorporated or formed in Australia respectively.[28]

102. A *partnership* is in Australia if the entity carries on business (or in the case of a partnership that is in receipt of ordinary income or statutory income jointly, other activities which generate that income) in Australia at or through a fixed and definite place of its own, or through an agent at a fixed and definite place, for a sufficiently substantial period of time.[29]

When effective use or enjoyment of a supply takes place outside Australia if the entity has a presence both in Australia and outside Australia

103. If a company, partnership, corporate limited partnership or trust has a presence(s) in Australia and outside Australia, we consider that effective use or enjoyment of the supply by the entity takes place outside Australia if the supply is provided to that entity outside Australia. The supply is provided to that entity outside Australia if the supply is for the purposes of the entity's presence outside Australia. Paragraph (b) of item 3 is satisfied and the supply is GST-free under item 3 if the other requirements of item 3 are satisfied. (See Flowchart 4, page 32.)

104. If, however, the supply is provided to that entity in Australia, effective use or enjoyment of the supply by that entity does not take place outside Australia. The supply is provided to that entity in Australia if the supply is for the purposes of the entity's presence in Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3. (See Flowchart 4, page 32.)

105. If the supply is provided for the purposes of both the presence of the entity in Australia and the presence of the entity outside Australia, (that is, separate parts of the supply are not identifiable as being provided for the purposes of each particular presence), we do not consider the supply is apportionable. As the supply (as a whole) is provided to an entity in Australia, effective use or enjoyment of the supply does not, in part, take place outside Australia and, therefore, paragraph (b) of item 3 is not satisfied to any extent. See Example 62, paragraphs 484 to 489, Part VI of the Explanation section.

106. Apportionment is, however, required if the supply is partly for the purposes of an entity's Australian presence. Apportionment is discussed further at paragraphs 117 to 126.

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[27] Refer to GSTR 2004/7 – paragraphs 230 to 379 (company); paragraphs 412 to 416 (corporate limited partnership); paragraphs 422 to 429 (trust).
[28] Refer to GSTR 2004/7 – paragraphs 333 to 339 (companies) and paragraphs 414 to 416 (corporate limited partnerships).
[29] Refer to GSTR 2004/7 – paragraphs 380 to 397.

107. In the case of delivery or freight services which are provided to a company, partnership, corporate limited partnership or trust in the circumstances described at paragraph 48, we accept those services are provided to that entity in Australia, if the goods are addressed to that entity in Australia. Alternatively, if the goods are addressed to that entity outside Australia, we accept those services are provided to that entity outside Australia. This outcome is not dependent upon the residency status of the entity to which the goods are addressed.[30] (See Example 20, paragraphs 426 to 441, Part IV; and Examples 57 and 58, Table 2, pages 104 and 105 respectively in Part V; of the Explanation section which illustrates this approach.)

108. Further explanation and examples of when a supply is provided to a company, partnership, corporate limited partnership or trust outside Australia and is effectively used or enjoyed outside Australia is provided at paragraphs 398 to 441, Part IV of the Explanation section.

Later use of a supply by an entity

109. If the nature of a supply is such that the supply is provided to an entity outside Australia and thus effectively used or enjoyed outside Australia, the fact that the results or outcomes of the supply are later used in Australia does not alter the outcome that effective use or enjoyment of the supply takes place in Australia.

110. For instance, if training services are provided to employees of a resident company who are outside Australia attending the training course, the later use in Australia of the skills and knowledge gained by the employees from those training services does not alter the fact that the training services are provided to the employees outside Australia and thus effective use or enjoyment of those services takes place outside Australia.[31]

111. Similarly, if a supply is provided to an entity in Australia, and that supply is later used outside Australia, that later use does not alter the fact that the supply is provided to that entity in Australia and thus effective use or enjoyment of the supply does not take place outside Australia.

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[30] This does not, however, include the delivery of goods that are generically addressed to 'The Householder' or are for delivery to the public at large. See Example 12, paragraph 347 to 352, Part III of this Ruling. It also does not apply to circumstances where an entity's own goods are freighted or moved from one location to another location. The circumstances of the particular supply in question must be considered to determine whether the supply is provided to another entity and whether the supply is provided to that other entity in Australia.

[31] See the UK VAT case of *Customs and Excise Commissioners v. G & B Practical Management Development Ltd* [1979] STC 280 as an example of the application of the distinction between the supply of training services to employees in the UK and the later use outside the UK of the skills and knowledge gained by the employees from those training services.

112. The enquiry is one of determining the exact nature of the supply having regard to all the facts and circumstances and then whether that supply, as properly described, is provided to an entity outside Australia or in Australia.

Another entity benefits from the supply

113. If the nature of the supply is such that the supply is provided to an entity outside Australia and thus effective use or enjoyment of the supply takes place outside Australia, this outcome is not altered even if another entity in Australia benefits from the supply.

114. Similarly, if a supply is provided to an entity in Australia, and another entity outside Australia benefits from that supply this does not alter the outcome that the supply is provided to an entity in Australia and thus effective use or enjoyment of the supply does not take place outside Australia.

115. This can occur with, for example, the supply of advertising services. If the advertising services are made and provided to an entity in Australia, the fact that another entity outside Australia also derives a benefit from that supply does not alter the fact that the advertising services are provided to the entity in Australia and effective use or enjoyment of those services does not take place outside Australia.[32]

116. As stated at paragraph 112, the enquiry is one of determining the nature of the supply having regard to all the facts and circumstances of the supply, and then whether the supply, as properly described, is provided to an entity outside Australia or in Australia.

Apportionment

117. A supply (or part of a supply),[33] which otherwise satisfies the requirements of item 3, may be partly GST-free and partly taxable[34] because of the application of paragraph (b) of item 3.

118. Apportionment may arise for the purposes of paragraph (b) of item 3 if a supply is partly provided to an entity in Australia and partly provided to an entity outside Australia (whether the same entity or a different entity). In such cases, the effective use or enjoyment of the supply takes place outside Australia to the extent the supply is provided to the entity outside Australia.

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[32] See Examples 48, 49 and 50, Table 2, pages 102 and 103, Part V of the Explanation section.

[33] For example, only part of a supply may satisfy the requirements in paragraph (a) of item 3. That part of the supply may be further apportioned under paragraph (b) of item 3.

[34] Assuming that the requirements of section 9-5 are otherwise satisfied.

119. To work out the value of the taxable part of the supply, the consideration is apportioned to each of the parts to find the consideration for the taxable part of the supply. The supplier can use any reasonable method that is supportable in the particular circumstances to apportion the consideration.[35]

120. The supplier should keep records that explain the method used.[36]

121. Sometimes the same supply of services is provided to an entity in Australia *and* a presence of that entity, or another entity, outside Australia; that is, the supply is not divisible with separate parts of the supply being provided to the presence of the entity in Australia and the presence of the entity, or another entity, outside Australia. In these circumstances no apportionment is required as the effective use or enjoyment of the supply does not take place outside Australia. Example 62 at paragraphs 484 to 489 of Part VI of the Explanation section illustrates this.

Apportionment when a supply is provided on a periodic or progressive basis

122. Under Division 156, if a taxable supply is made for a period or on a progressive basis and the consideration is provided on a periodic or progressive basis, the GST payable is attributed as if each progressive or periodic component of the supply were a separate supply.[37]

123. If a supply is provided for a period with consideration given on a periodic basis and, for part of the time when the thing supplied is done, the supply is provided to an entity in Australia and thus is effectively used or enjoyed in Australia, it may not be possible for the supplier to identify the taxable part of the supply at the beginning of the period over which the thing is provided. This is because there is no way for the supplier to determine in advance whether, and to what extent, the supply is provided to an entity in Australia (and thus effectively used or enjoyed in Australia) during the period over which the supply is provided. However, it is possible for the supplier to identify this in relation to the periodic components of the supply. Accordingly, we accept that this is the basis on which GST payable on the supply (and input tax credits on the creditable acquisition) is attributable to tax periods. See Example 63, paragraphs 497 to 510, Part VI of the Explanation section.

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[35] Refer to paragraphs 92 to 113 of GSTR 2001/8 Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts.

[36] Refer to paragraphs 25 to 30 of GSTR 2001/8 Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts; and paragraph 70(1)(d) of the *Taxation Administration Act 1953*.

[37] Section 156-25 provides that Division 156 does not apply to a supplier who accounts on a cash basis.

Supplier accounts on a cash basis

124. If a supplier, who accounts on a cash basis, makes a supply for a period or on a progressive basis and the consideration is given on a periodic or progressive basis, similar issues may arise to those referred to at paragraph 123. Example 64, paragraphs 512 to 525, Part VI of the Explanation section illustrates how to attribute GST payable in these circumstances.

Apportionment where the supply is performed over more than one tax period but consideration is paid in earlier tax period

125. If a supply is performed over more than one tax period and the GST (if any) on the supply is attributable to a tax period before the completion of the supply (for example, consideration is fully paid in one tax period but the supply is spread across two or more later tax periods), the supplier must use a reasonable basis for determining the extent to which the supply is taxable. That is, the supplier must use a reasonable basis to determine the extent to which the supply is provided to another entity in Australia and thus effectively used or enjoyed in Australia.

126. If there is a change in circumstance such that the supply is taxable to a greater or lesser extent than determined in an earlier tax period, the supplier has an adjustment event. The adjustment may be either an increasing or a decreasing adjustment depending upon whether the corrected GST amount is greater than, or less than, the previously attributed GST amount.[38]

Application of paragraph (b) of item 3 to certain complex arrangements

Subcontract arrangements

127. Sometimes a supplier (first supplier) subcontracts the provision of services to one of its customer to another supplier (second supplier). There may be various reasons for subcontracting the service. For example, the first supplier may not have the necessary capabilities to perform the service itself.

Supply by the first supplier

128. If the first supplier subcontracts the provision of a particular service to another supplier, that subcontract arrangement does not alter the character or nature of the supply by the first supplier. That is, if the character or nature of the supply by the first supplier is one of a service, the supply by the first supplier to the customer is not transformed from the supply of a service to the supply of a right; nor

[38] Refer to paragraphs 12 to 15 and 72 to 87 in GSTR 2000/19 Goods and services tax: making adjustments under Division 19 for adjustment events.

is it changed from the supply of an actual service to that of an arranging service.

129. We consider that a supply that is an arranging service typically involves the first supplier arranging for the second supplier to enter into a contract of supply with the customer for the supply of the required thing.

130. If the supply of the service by the first supplier to the customer is provided to that customer in Australia, effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.

131. If, however, the supply of the service by the first supplier to the customer is provided to that customer outside Australia, effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is satisfied and the supply is GST-free under item 3 if the other requirements of that item are satisfied.[39]

Supply by the second supplier

132. The supply by the second supplier is also the supply of a service; the supply of the service is made by the second supplier to the first supplier but is provided to the customer. It is therefore the customer that uses or enjoys the supply. It is then necessary to determine where use or enjoyment of the supply by the customer takes place. (See paragraphs 73 to 94 of the Ruling section, if the customer is an individual; see paragraphs 95 to 108 of the Ruling section, if the customer is an entity other than an individual.)

133. If the supply by the second supplier to the customer is provided to that customer in Australia, effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.

134. If, however, the supply from the second supplier to the customer is provided to that customer outside Australia, effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is satisfied and the supply is GST-free under item 3 if the other requirements of that item are satisfied.[40]

135. For further explanation and examples refer to paragraphs 532 to 569 Part VII of the Explanation section. You may also wish to refer to GSTR 2005/6 (Part VIII, paragraphs 713 to 755) which also provides a detailed discussion of subcontract arrangements.

[39] The supply by the second supplier is made to the first supplier. To satisfy paragraph (a) of item 3 the first supplier must not be in Australia in relation to the supply as explained in GSTR 2004/7.

[40] The supply by the second supplier is made to the first supplier. To satisfy paragraph (a) of item 3 the first supplier must not be in Australia in relation to the supply as explained in GSTR 2004/7.

Global supplies

136. In many multi-national groups, a range of services are made available to group members through an internal service provider – typically the parent company or a separate dedicated entity. Such services include accounting, auditing, legal, information technology, research and development and financial services. Group members for which these services are performed are sometimes directly charged a fee by the group entity that provides the service or in other cases a cost is allocated. The fee or cost allocation may be separately identified or part of a bundled charge or cost allocation, sometimes incorporated into a management fee.

137. Sometimes the internal service provider contracts with an external service provider to perform the services for the group. In that case, there is typically a head agreement between the internal service provider and the external provider (the head supplier) and a range of subcontracting agreements to enable the head supplier to fulfil its obligations to provide services to members of the global group.

138. Where services are subcontracted by the internal service provider to a head supplier, the character of the supply that is, a service by the internal service provider to the group member does not alter. The supply by the internal service provider is and remains a supply of a service to the group member; the nature of that service does not change.

139. Similarly, subsequent subcontracting arrangements do not alter the character or nature of the supply made, or provided. The supply by the head supplier remains the supply of a service as does the supply by an entity that the head supplier may subcontract. Regardless of whether the supply is being made by the head supplier to the internal service provider, or by a subcontractor to the head supplier, the supply is required to be provided to the group member. It is therefore that group member which is the entity that uses or enjoys the supply. If that supply is provided to the group member outside Australia, effective use or enjoyment takes place outside Australia. If that supply is provided to the group member in Australia, effective use or enjoyment does not take place outside Australia.

140. For further explanation and examples refer to paragraphs 570 to 600 Part VII of the Explanation section. You may also wish to refer to GSTR 2005/6 (Part VIII, paragraphs 756 to 859) which provides a more detailed discussion of global supplies.

Application of paragraph (b) of item 3

141. The following flowcharts illustrate, in broad terms, the application of paragraph (b) of item 3 to a supply made to an entity that is not in Australia when the thing supplied is done, as explained in this Ruling.

142. Flowchart 1, page 29, describes how to determine which entity effectively uses or enjoys the supply.

143. Flowchart 2, page 30, describes how to determine when effective use or enjoyment of a supply by a resident individual takes place outside Australia.

144. Flowchart 3, page 31, describes how to determine when effective use or enjoyment of a supply by a non-resident individual takes place outside Australia.

145. Flowchart 4, page 32, describes when effective use or enjoyment of a supply by an entity other than an individual takes place outside Australia.

146. The flowcharts should be read in conjunction with the relevant paragraphs in this Ruling.

Flowchart 1 – in the application of paragraph (b) of item 3, how to determine which entity effectively uses or enjoys the supply

Q 1: **To which entity is the supply made?**
[This is the recipient entity for the purposes of paragraph (a) of item 3].

Having determined the recipient entity consider

Q 2: **To which entity is the supply provided?**
[That is, is the supply as properly described, provided to an entity other than the entity with which the supplier made the agreement for the supply. (Refer paragraphs 191 to 254, Part II of the Explanation section of this Ruling.)]

A supply is provided to another entity if the contractual flow is to one entity (the recipient) while the actual flow of that supply (for example, the performance of a service), is in whole or in part, to another entity that is not the entity with which the supplier made the agreement for the supply. Refer paragraphs 191 to 254, Part II of the Explanation section.

To determine whether the supply is provided to another entity you need to consider:

(i) Is the supply a service, right, or some other thing (that is what is the character of the supply)? Refer paragraphs 201 to 203, Part II of the Explanation section.

(ii) What is the exact nature of the supply having regard to the facts and circumstances of the supply? Refer paragraphs 204 to 253, Part II of the Explanation section.

In the case of freight or delivery services, where goods from one entity are addressed for delivery to another entity, we consider that the delivery or freight services are provided to that addressee entity. Refer paragraph 210, Part II of the Explanation section.

[Whether a supply is provided to an entity other than the recipient entity to which the supply is made is also discussed in GSTR 2005/6 at paragraphs 66 to 82 and 258 to 322. The principles discussed in that Ruling are applicable to this Ruling.]

The entity to which the supply is provided is the entity that uses or enjoys the supply

See paragraphs 193 to 195, Part II of the Explanation section

If the entity that uses or enjoys the supply is:

- a **resident individual** go to **Flowchart 2** on page 31;
- a **non-resident individual** go to **Flowchart 3** on page 32;
- an **entity other than an individual** go to **Flowchart 4** on page 33.

Flowchart 2 – if the entity that uses or enjoys the supply is a resident individual, how to determine whether effective use or enjoyment of the supply takes place outside Australia

Following on from Flowchart 1

Q 3: When the thing supplied is done, is the supply provided to the resident individual in Australia or outside Australia?

When the thing supplied is done

A supply is provided as and when the thing supplied is done. Therefore, this is the relevant time for determining whether a supply is provided to a resident individual in Australia or outside Australia. Refer paragraphs 259 to 261, Part III of the Explanation section for when different types of supplies, eg supplies of services, supplies of advice etc., are provided to an entity.

When a supply is provided to a resident individual in Australia or outside Australia

- A supply is provided to a resident individual *in Australia* if that individual:
  - is physically in Australia when the thing supplied is done; or
  - is physically outside Australia when the thing supplied is done but that presence outside Australia is not integral to, but merely coincidental with, the provision of the supply.
- A supply is provided to a resident individual *outside Australia* if that individual is physically outside Australia when the thing supplied is done and that presence outside Australia is integral to, as distinct from being merely coincidental with, the provision of the supply.

Determining whether a resident individual's presence outside Australia is integral to the provision of the supply requires an examination of the facts and circumstances of the supply. However, some indicators that the presence of the individual outside Australia is integral to the provision of the supply are:

- the need for the supply arises from the resident individual's presence outside Australia; for example, a supply of legal services in relation to an offence committed by that individual while outside Australia; or
- the presence of the resident individual outside Australia is integral to the performance, receipt or delivery of the supply; for example, training, entertainment or travel services.

Refer paragraphs 262 to 376, Part III of the Explanation section.

In the case of delivery or freight services where goods from one entity are addressed for delivery to an individual, we accept those services are provided to the individual in Australia, if the goods have an Australian address, and outside Australia, if the goods have an address outside Australia. Refer paragraphs 330 to 352, Part III of the Explanation section.

Apportionment

To the extent that the supply is provided to a resident individual in Australia effective use or enjoyment of the supply does not take place outside Australia and the supply is not GST-free. To the extent that the supply is provided to a resident individual outside Australia effective use or enjoyment of the supply takes place outside Australia and the supply is GST-free (if the other requirements of item 3 are met and subsections 38-190(2) and (2A) do not apply). The supplier is required to apportion the consideration between the GST-free and taxable parts of the supply. Refer to paragraphs 452 to 527, Part VI of the Explanation section.

The supply is provided to the resident individual **in Australia**

The supply is provided to the resident individual **partly in Australia** and **partly outside Australia**

The supply is provided to the resident individual **outside Australia**

To the extent that the supply…

is provided to the resident individual in Australia

is provided to the resident individual outside Australia

Effective use or enjoyment of the supply does not take place outside Australia.

The supply is not GST-free under item 3.

Effective use or enjoyment of the supply takes place outside Australia.

The supply is GST-free under item 3 if the other requirements of item 3 are met and subsections 38-190(2) and (2A) do not negate the GST-free status of the supply.

Flowchart 3 – if the entity that uses or enjoys the supply is a non-resident individual, how to determine whether effective use or enjoyment of the supply takes place outside Australia

Following on from Flowchart 1

Q 3 : When the thing supplied is done, is the supply provided to the non-resident individual outside Australia or in Australia?

When the thing supplied is done

A supply is provided as and when the thing supplied is done. Therefore, this is the relevant time for determining whether a supply is provided to a non-resident individual in Australia or outside Australia. Refer to paragraphs 259 to 261 Part III of the Explanation section for when different types of supplies, eg supplies of services, supplies of advice etc., are provided to an entity.

When a supply is provided to a non-resident individual outside Australia or in Australia

- A supply is provided to a non-resident individual *outside Australia* if that individual:
  - is physically outside Australia when the thing supplied is done; or
  - is physically in Australia when the thing supplied is done but that presence in Australia is not integral to, but merely coincidental with, the provision of the supply.
- A supply is provided to a non-resident individual *in Australia* if that individual is physically in Australia when the thing supplied is done and that presence in Australia is integral to, as distinct from being merely coincidental with, the provision of the supply.

Determining whether a non-resident individual's presence in Australia is integral to the provision of the supply requires an examination of the facts and circumstances of the supply. However, some indicators that the presence of the individual in Australia is integral to the provision of the supply are:

- the need for the supply arises from the non-resident individual's presence in Australia; for example, a supply of legal services in relation to an offence committed by that individual while in Australia; or
- the presence of the non-resident individual in Australia is integral to the performance, receipt or delivery of the supply; for example training, entertainment or travel services.

Refer to paragraphs 386 to 448, Part III of the Explanation section.

In the case of delivery or freight services where goods from one entity are addressed for delivery to an individual, we accept those services are provided to the individual in Australia, if the goods have an Australian address, and outside Australia, if the goods have an address outside Australia. Refer to paragraphs 330 to 352, Part III of the Explanation section.

Apportionment

To the extent that the supply is provided to a non-resident individual in Australia effective use or enjoyment of the supply does not take place outside Australia and the supply is not GST-free. To the extent that the supply is provided to a non-resident individual outside Australia effective use or enjoyment of the supply takes place outside Australia and the supply is GST-free (if the other requirements of item 3 are met and subsections 38-190(2) and (2A) do not apply). The supplier is required to apportion the consideration between the GST-free and taxable parts of the supply. Refer to paragraphs 452 to 527, Part VI of the Explanation section.

The supply is provided to the non-resident individual **in Australia**

The supply is provided to the non-resident individual **partly in Australia** and **partly outside Australia**

The supply is provided to the non-resident individual **outside Australia**

To the extent that the supply…

is provided to the non-resident individual in Australia

is provided to the non-resident individual outside Australia

Effective use or enjoyment of the supply does not take place outside Australia.

The supply is not GST-free under item 3.

Effective use or enjoyment of the supply takes place outside Australia.

The supply is GST-free under item 3 if the other requirements of item 3 are met and subsections 38-190(2) and (2A) do not negate the GST-free status of the supply.

Flowchart 4 – if the entity that uses or enjoys the supply is a company, partnership, corporate limited partnership or trust, how to determine whether effective use or enjoyment of the supply takes place outside Australia

Following on from Flowchart 1

Q 3: When the thing supplied is done, is the supply provided to the company, partnership, corporate limited partnership or trust entity in Australia or outside Australia?

When the thing supplied is done

A supply is provided as and when the thing supplied is done. Therefore, this is the relevant time for determining whether a supply is provided to an entity in Australia or outside Australia. Refer to paragraph 390, Part IV of the Explanation section for when different types of supplies, eg supplies of services, supplies of advice etc., are provided to an entity.

In Australia (that is has a presence in Australia)

A *company, corporate limited partnership or trust* is in Australia (irrespective of its residency status) when the thing supplied is done, if the entity carries on business, (or in the case of an entity that does not carry on business, carries on activities), in Australia at or through a fixed and definite place of its own, or through an agent at a fixed and definite place, for a sufficiently substantial period of time.

Also a *company or corporate limited partnership* is in Australia if it is incorporated or formed in Australia respectively.

A *partnership* is in Australia if the entity carries on business (or in the case of a partnership that is in receipt of ordinary income or statutory income jointly, other activities which generate that income) in Australia at or through a fixed and definite place of its own, or through an agent at a fixed and definite place, for a sufficiently substantial period of time.

Refer to paragraphs 394 to 397, Part IV of the Explanation section.

When a supply is provided to the entity in Australia or outside Australia

A supply is provided to a company, partnership, corporate limited partnership or trust in Australia if the supply is for the purposes of the entity's Australian presence (for example, an Australian branch, representative office or agent if it is a non-resident company; or the Australian head office if it is an Australian incorporated company). Refer to paragraphs 398 to 441, Part IV of the Explanation section.

In the case of delivery or freight services where goods from one entity are addressed for delivery to another entity, we consider those services are provided to that other entity in Australia, if the goods have an Australian address, and outside Australia, if the goods have an address outside Australia. Refer to paragraphs 422 to 441, Part IV of the Explanation section of this Ruling.

Note: If the entity only has a presence in Australia, the supply is provided to that entity in Australia. If the entity only has a presence outside Australia the supply is provided to that entity outside Australia (see paragraphs 392 and 393, Part IV of the Explanation section).

Apportionment

To the extent that the supply is provided to the presence of a company, partnership, corporate limited partnership or trust in Australia, effective use or enjoyment of the supply does not take place outside Australia and the supply is not GST-free. To the extent that the supply is provided to the presence of a company, partnership, corporate limited partnership or trust outside Australia, effective use or enjoyment of the supply takes place outside Australia and the supply is GST-free (if the other requirements of item 3 are met and subsections 38-190(2) and (2A) do not apply). The supplier is required to apportion the consideration between the GST-free and taxable parts of the supply. Refer to paragraphs 452 to 527 of the Explanation section.

The supply is provided to the entity in Australia – for example

the entity *only* has a presence in Australia;

or

the entity has a presence outside Australia but *at all times* the supply is for the purposes of its presence in Australia

The supply is partly provided to an entity in Australia and partly provided to an entity outside Australia – for example

for part of the time an entity has a presence in Australia and the supply is for the purposes of its presence in Australia;

or

for all of the time an entity has a presence in Australia but the supply is only *partly* for the purposes of its presence in Australia

The supply is provided to the entity outside Australia – for example

the entity *does not* have a presence in Australia;

or

the entity has a presence in Australia but *at no time is* the supply for the purposes of its presence in Australia.

To the extent that the supply…

is provided to an entity *in Australia*

is provided to an entity *outside Australia*

Effective use or enjoyment of the supply <u>does not</u> take place outside Australia. The supply is not GST-free under item 3

Effective use or enjoyment of the supply takes place outside Australia. The supply is GST-free under item 3 if the other requirements of that item are met and subsections 38-190(2) or (2A) do not negate the GST-free status of the supply.

Explanation (this forms part of the Ruling)

Item 3 and subsection 38-190(4)

147. Section 38-190 applies to supplies of things, other than goods or real property, for consumption outside Australia. The table in subsection 38-190(1) comprises five items which set out supplies of things, other than goods or real property, for consumption outside Australia that are GST-free.

148. The policy intention, as evidenced by the heading to section 38-190 and the table in subsection 38-190(1), is to treat supplies of services or things, other than goods or real property, as GST-free supplies if consumption of those supplies occurs outside Australia.[41]

149. For a supply to be GST-free under item 3, paragraphs (a) and (b) of item 3 must be satisfied and the supply must not be 'a supply of work physically performed on goods situated in Australia when the thing supplied is done, or a supply directly connected with real property situated in Australia'.[42]

150. Paragraph (a) of item 3 requires the supply to be made to 'a recipient[43] who is not in Australia when the thing supplied is done'.[44] Item 3, like item 2, is formulated such that the location of the recipient, (that is, the entity to which the supply is made), is the basis for determining whether a supply is consumed outside Australia. The presumption underlying paragraph (a) of item 3 (and item 2) is that a supply is consumed outside Australia if the supply is made to a recipient who is not in Australia when the thing supplied is done. Unlike item 2, the residency status of the recipient is not relevant for the purposes of item 3. That is, item 3 may apply to a supply made to either a resident or a non-resident entity.

151. However, if the recipient of a supply does not satisfy the requirements of paragraph (a) of item 3, subsection 38-190(4) must be considered. Subsection 38-190(4) recognises, in relation to item 3, (as does subsection 38-190(3) in relation to item 2[45]) that focussing solely on the location of the entity to which the supply is made, does not always produce an outcome consistent with the policy intention to

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[41] Refer to the Explanatory Memorandum accompanying the Indirect Tax Legislation Amendment Bill 2000 at paragraph 3.30.

[42] For further guidance refer to GSTR 2003/7 Goods and Services Tax: what do the expressions 'directly connected with goods or real property' and 'a supply of work physically performed on goods' mean for the purposes of subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*?

[43] 'Recipient, in relation to a supply, means the entity to which the supply was made': section 195-1.

[44] The requirement that the recipient is not in Australia when the thing supplied is done (the 'not in Australia' requirement) is explained in GSTR 2004/7 according to entity type.

[45] Subsection 38-190(3) negates the GST-free status of certain supplies that are GST-free under item 2.

treat as GST-free those supplies that are for consumption outside Australia.

152. Subsection 38-190(4) applies to extend the application of paragraph (a) of item 3 where the supply made to an entity in Australia in relation to the supply is provided to another entity outside Australia. The supply is taken to be made to a recipient who is not in Australia.[46] The supply therefore satisfies paragraph (a) of item 3.

153. To illustrate the application of subsection 38-190(4), the following two examples of the types of supplies provided to another entity outside Australia are given in the Explanatory Memorandum:[47]

- a supply of mobile telephone roaming to an Australian business with an employee overseas; and
- a supply to an Australian business of a training course to be conducted overseas.

154. In each of these examples, the supply is covered by subsection 38-190(4) because the supply is made to a resident entity (the Australian business) but is provided to another entity, outside Australia (the employee or person being trained). The supply is therefore taken to satisfy paragraph (a) of item 3.

155. Subsection 38-190(4), similar to subsection 38-190(3),[48] is about identifying where a supply is consumed by reference to the location of an entity other than the recipient. If subsection 38-190(4) applies, it is the location of the entity to which the supply is provided, not the location of the entity to which the supply is made, that is the basis for identifying whether consumption of the supply occurs outside Australia.

156. If paragraph (a) of item 3 is satisfied, or is taken to be satisfied because of the application of subsection 38-190(4), it is necessary to consider paragraph (b) of item 3.

157. Paragraph (b) of item 3 requires that the effective use or enjoyment of the supply takes place outside Australia. This requirement recognises that paragraph (a) of item 3 may be satisfied in circumstances where consumption of the supply does not take place outside Australia.

158. For example, consider a supply that is made (and provided) to an individual who resides in Australia and which is for use or enjoyment by that individual in Australia. If that individual is outside Australia on holidays when the services are performed, the supply to that individual is *potentially* GST-free because that individual just

[46] For a supply covered by subsection 38-190(4) to be GST-free all of the requirements of item 3 must be satisfied.
[47] Refer to paragraph 3.27 of the Explanatory Memorandum accompanying Indirect Tax Legislation Amendment Bill 2000.
[48] However, in contrast to subsection 38-190(4), the purpose of subsection 38-190(3) is to negate the GST-free status of certain supplies that are otherwise GST-free under item 2. The application of subsection 38-190(3) is explained in GSTR 2005/6.

happens to be physically outside Australia when the thing supplied is done. However, paragraph (b) of item 3 ensures that the supply is not GST-free as the 'effective use or enjoyment' of the supply does not take place outside Australia. It is therefore recognised that the location of an individual when the thing supplied is done does not always align with the place of consumption, that is, the place where the supply is used or enjoyed.

159. Another example is a supply made to a non-resident company that is not in Australia when the thing supplied is done but the supply is provided to another entity in Australia for use or enjoyment by that other entity in Australia (for example an employee of that company). The supply is *potentially* GST-free under item 3 because the entity to which the supply is made – the non-resident company – is not in Australia when the thing supplied is done. However, paragraph (b) of item 3 ensures that the supply is not GST-free as the effective use or enjoyment of the supply does not take place outside Australia. The effective use or enjoyment requirement in this case achieves a similar outcome to the application of subsection 38-190(3), which applies to deny GST-free status of a supply under item 2, if the supply is made to a non-resident entity that is not in Australia but is provided to another entity in Australia.

How the requirements and application of paragraph (b) of item 3 are discussed in the Explanation section of this Ruling

160. We have divided the Explanation section into seven parts as follows:

PART	TOPIC
Part I *(paragraphs 161 to 190)*	Our approach to determining where effective use or enjoyment of a supply takes place.
Part II *(paragraphs 191 to 254)*	How to identify the entity (or entities) that effectively uses or enjoys the supply (applying our approach as explained in Part I).
Part III *(paragraphs 255 to 385)*	Determining whether effective use or enjoyment of a supply by an individual takes place outside Australia (applying our approach as explained in Part I).
Part IV *(paragraphs 386 to 448)*	Determining whether effective use or enjoyment of a supply by a company, partnership, corporate limited partnership or trust takes place outside Australia (applying our approach as explained in Part I).

PART	TOPIC
Part V *(paragraphs 449 to 451)*	The GST treatment of various supplies under item 3 (and item 2 for comparative purposes) drawing on examples from GSTR 2005/6.
Part VI *(paragraphs 452 to 527)*	When apportionment may be required.
Part VII *(paragraphs 528 to 600)*	The application of paragraph (b) of item 3 to subcontract arrangements and global supplies.

Part I – our approach to determining where effective use or enjoyment of a supply takes place

The inherent practical difficulties in determining where use or enjoyment of a supply takes place

161. 'Effective' use or enjoyment of a supply refers to the 'real' or 'actual' use or enjoyment of the supply. The terms use and enjoyment are not defined in the legislation and therefore take their ordinary meaning. Use typically refers to the act of using or employing something, while enjoyment is the act or state of enjoying something (that is the deriving of pleasure or satisfaction).

162. Although the words are seemingly easy to define in general terms, it is often a very difficult and subjective matter to determine where a supply is used or enjoyed. For example, consider a supply of storage services, which is made to a non-resident individual and involves the storage of the individual's goods in Australia. Is that supply effectively used or enjoyed where the goods are physically stored (that is, in Australia); or is the supply used or enjoyed where the individual is located during the period over which the goods are stored (that is, outside Australia)?

163. Another example is the supply of a service such as a haircut. Some may argue that the effective use or enjoyment of the supply is immediate and thus occurs at the place where the person receives the haircut. Others may argue that the use or enjoyment of the haircut lasts for a longer period of time or perhaps until the next haircut and thus use or enjoyment takes place wherever the individual is located between haircuts. This simple example therefore raises two issues which are particularly subjective. How is it that the supply is used or enjoyed by the individual? And is the use or enjoyment of the supply immediate or does it take place over a period of time?

164. That there is difficulty with the practical application of the use or enjoyment concept is borne out by the overseas GST/VAT experience.

165. The Canadian GST legislation in its early years provided that a supply of a service that is primarily for consumption, use or enjoyment in Canada would not be zero-rated (that is, it would be subject to GST). However, due to practical difficulties with applying this provision, Canada amended its GST legislation to delete this provision and to replace it with a new concept similar to our subsection 38-190(3). As explained in the explanatory notes accompanying the amendment:

> Existing paragraph 7(*a*), which excludes from zero-rating under section 7 a service that is primarily for consumption, use or enjoyment in Canada, is replaced with new paragraph 7(*a*.1). Difficulties have arisen in the determination of where certain services are primarily consumed, used or enjoyed. New paragraph 7(*a*.1) excludes from section 7 a supply of a service that is 'rendered' to an individual while that individual is in Canada.[49]

[49] See page 381, *Amendments to the Excise Tax Act, the Income Tax Act and Related Acts*, Notice of Ways and Means Motion, Draft Regulations and Explanatory Notes, available at: http://www.fin.gc.ca/drleg/96-034e.pdf.

166. More recently The European Commission commented when reviewing place of supply rules for services made to end consumers:

> One option was to tax services at the place where they are actually used and enjoyed, which would best assure taxation at the place of actual consumption. However, discussions in the VAT Committee have shown that in many cases it is very difficult to determine where the actual use and enjoyment of a service takes place. This is the reason why the Commission would not favour using this specific criterion, even if, from a strict theoretical VAT point of view, it may be the most accurate way to achieve taxation of consumption at the place of consumption.[50]

167. We agree that identifying the place where a supply is actually used or enjoyed, would best assure that a supply is taxed at the place of actual consumption. If the supply is used or enjoyed outside Australia, the place of consumption is outside Australia and therefore GST-free. However, as indicated above, this requirement has many practical difficulties even in the case of supplies that are relatively straightforward like the supply of a haircut.

Our approach

168. For the most part section 38-190 identifies the place of consumption (that is, the place of use or enjoyment) by means of a location test, that is, the location of the entity to which the supply is either made or provided.

169. Given the subjective nature and the inherent practical difficulties with applying the actual words 'effective use or enjoyment', we consider that, for the purposes of item 3, it is appropriate to determine the place of effective use or enjoyment of a supply by reference to the location of the entity that uses or enjoys the supply. This is consistent with the approach taken in the remainder of section 38-190, in particular, for items 2 and 3.

Identifying the entity that uses or enjoys the supply

170. A supply is either made and provided to the same entity, or is made to one entity but is provided to another entity (or entities) (such as in the circumstances outlined in subsections 38-190(3)[51] and (4)[52]).

171. To work out whether a supply is effectively used or enjoyed outside Australia, as required by the test in paragraph (b) of item 3, we first identify the entity that uses or enjoys the supply, recognising that a supply may be made to one entity but be provided to another entity.

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[50] See page 6, *Consultation Paper VAT – The Place of Supply of Services to Non-Taxable Persons*, Brussels 2005, available at: http://europa.eu.int/comm/taxation_customs/common/consultations/tax/index_en.htm
[51] See paragraph 27 and also GSTR 2005/6.
[52] See paragraph 28 and also paragraphs 101 and 186 to 197 in GSTR 2004/7.

172. Item 2 and subsection 38-190(3), and item 3 and subsection 38-190(4), evidence a clear intention by Parliament to focus on the entity to which the supply is provided in determining the place of consumption.

173. Item 2 applies to a supply that is made to a non-resident who is not in Australia when the thing supplied is done. However, if that supply is provided (or is required to be provided) to another entity in Australia, the place of consumption of that supply is determined by the location of the entity to which the supply is provided (see subsection 38-190(3)). Although the non-resident recipient of the supply is not in Australia, consumption of the supply is considered to be in Australia and thus the supply is no longer GST-free under item 2 if the supply is provided to another entity in Australia.

174. Item 3 similarly applies to a supply that is made to a recipient who is not in Australia when the thing supplied is done. However, if the resident recipient of the supply is in Australia but the supply is provided (or is required to be provided) to another entity outside Australia, subsection 38-190(4) extends the scope of item 3. If the supply is provided (or is required to be provided) to another entity outside Australia, the not in Australia requirement in paragraph (a) of item 3 is taken to be satisfied.

175. Therefore, we consider that to determine whether effective use or enjoyment of a supply takes place outside Australia, it is necessary, and appropriate, to focus on the entity to which the supply is provided. It is this entity that has the real or actual effective use or enjoyment of the supply. The entity to which the supply is provided may, or may not, be the same entity to which the supply is made.

176. Our approach to identifying the entity that uses or enjoys the supply (that is the entity to which the supply is provided) is discussed fully at paragraphs 191 to 254, Part II of the Explanation section.

Determining whether effective use or enjoyment of the supply takes place outside Australia

177. Once the entity to which the supply is provided is determined, it is then necessary to consider if effective use or enjoyment of the supply by that entity takes place outside Australia.

178. In the context of section 38-190 and for the reasons that follow, it is appropriate, in our view, to determine whether effective use or enjoyment of a supply by an entity takes place outside Australia by determining whether the supply is provided to that entity in Australia or outside Australia. That is, effective use or enjoyment of a supply takes place outside Australia if and only if the supply is provided to that entity outside Australia; it does not take place outside Australia if the supply is provided to that entity in Australia.

179. Recognising that in many cases it is very difficult to determine where the actual use or enjoyment of a supply takes place, and reading the words 'effective use or enjoyment' in the context of section 38-190,[53] we consider that this approach, which is based on where provision of the supply to an entity occurs, is sensible and consistent with the scheme of section 38-190. Also it is consistent with Parliament's likely intentions having regard to the later enactment of subsections 38-190(3) and (4). In particular, the Explanatory Memorandum accompanying the Bill[54] that inserted subsection 38-190(4) explains that a supply that is made to an entity in Australia but provided to another entity outside Australia should satisfy paragraph (a) of item 3 as 'the effective use and enjoyment of the supply is outside Australia'.

180. Items 2 and 3 and subsections 38-190(3) and (4), which affect the application of items 2 and 3 respectively, evidence Parliament's intention that if a supply is provided to an entity at a particular location, consumption of the supply takes place at that location and the GST consequences are determined accordingly. It is therefore consistent to determine the place of effective use or enjoyment (and thus consumption) of a supply by reference to the location where provision of the supply to the entity occurs.

181. Our approach also produces consistent outcomes across items 2 and 3 for supplies made to non-residents (item 2 does not apply to residents) ensuring that the operation of item 2 and subsection 38-190(3) is not thwarted.

182. For example, if a supply is made to a non-resident entity that is not in Australia in relation to the supply[55] but is provided to another entity in Australia, that supply is not GST-free under item 2 as subsection 38-190(3) applies to deny GST-free status to the supply. The supply, otherwise covered by item 2, is denied GST-free status as it is provided to another entity in Australia that is, the consumption of the supply takes place in Australia.

183. However, item 3 may also apply to that supply. The not in Australia requirement in paragraph (a) of item 3 is satisfied as the supply is made to a non-resident entity that is not in Australia in relation to the supply. There is no equivalent to subsection 38-190(3) to deny GST-free status to that supply under item 3. It is then necessary to consider if effective use or enjoyment of the supply takes place outside Australia (that is whether paragraph (b) of item 3 is satisfied). On our view, as the supply is provided to an entity in Australia, effective use or enjoyment of the supply does not take place outside Australia and item 3 is not satisfied. The outcome under item 2 and item 3 is the same.

[53] See Hill J, *ACP Publishing Pty Limited v. Commissioner of Taxation* [2005] FCAFC 57, at paragraph 24.
[54] Indirect Tax Laws Amendment Bill 2000 at paragraph 3.25.
[55] See GSTR 2004/7.

184. As item 2 is a provision which is specifically applicable to supplies made to non-resident entities, it is unlikely that Parliament intended those same supplies to be GST-free under item 3; a provision which is aimed at resident entities but which can apply to non-resident entities. Therefore, by adopting a similar approach to that taken in subsection 38-190(3) in determining where effective use or enjoyment of a supply takes place, we ensure that a supply, that is not GST-free under item 2 because of the operation of subsection 38-190(3), is also not GST-free under item 3.

185. Further, if a supply is made to a resident entity that is in Australia in relation to the supply, but is provided to another entity outside Australia, subsection 38-190(4) applies with the effect that the supply is taken to be made to an entity that is not in Australia and paragraph (a) of item 3 is therefore considered to be satisfied. In this case, we consider that the supply should not be denied GST-free status under paragraph (b) of item 3. It would, in our view, be anomalous if, having determined that a supply is provided to an entity outside Australia, we then determine that effective use or enjoyment of that supply does not take place outside Australia.

186. Thus to take a different approach in giving effect to the words 'effective use or enjoyment' which are concerned with consumption, is in our view, inappropriate and unnecessary in the context of section 38-190. To do so may subject an entity to greater uncertainty and additional complexity, particularly if it has already been determined that the supply is provided to the entity either in Australia or outside Australia.

187. We therefore consider that effective use or enjoyment of a supply by the relevant entity takes place outside Australia if the supply is provided to that entity outside Australia; effective use or enjoyment of a supply does not take place outside Australia if the supply is provided to that entity in Australia.

188. This approach means that effective use or enjoyment of a supply takes place as and when the thing supplied is done. This is consistent with the legislative framework of section 38-190, in particular items 2 and 3 and paragraph (b) of item 4 in the table in subsection 38-190(1) and subsections 38-190(3) and (4).

189. The approach in this Ruling to determining when a supply is provided to an entity in Australia is consistent with the approach in GSTR 2005/6[56] which is similarly concerned, for the purposes of subsection 38-190(3), with determining when a supply is provided to an entity in Australia.[57]

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[56] Goods and Services Tax Ruling: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the *A New Tax system (Goods and Services Tax) Act 1999.*

[57] See paragraphs 66 to 129 in the Ruling section and paragraphs 258 to 498 in the Explanation section of GSTR 2005/6.

190. Our approach to working out whether a supply is used or enjoyed outside Australia (that is, the supply is provided to an entity outside Australia) is discussed fully at paragraphs 255 to 385, Part III of the Explanation section (if the supply is provided to an individual) and paragraphs 386 to 448, Part IV of the Explanation section (if the supply is provided to an entity other than an individual).

Part II – how to identify the entity (or entities) that effectively uses or enjoys the supply

191. Typically, a supply is either made and provided to the same entity (that is, the recipient with which the supplier made the agreement for the supply), or is made to one entity (the recipient) and provided to another entity (or entities), such as in the circumstances outlined in subsections 38-190(3)[58] and (4)[59].

192. For the reasons explained at paragraphs 161 to 176, Part I of the Explanation section, we determine whether effective use or enjoyment of a supply takes place outside Australia with reference to the entity to which the supply is provided. This may, or may not, be the same entity to which the supply is made. See Flowchart 1 at page 29 of the Ruling section.

Supply is made and provided to the same entity (that is the recipient)

193. If the supply is made, and provided, to the same entity that entity is the entity that uses or enjoys the supply and is the relevant entity for the purposes of determining whether effective use or enjoyment of the supply takes place outside Australia. That entity must satisfy paragraphs (a) and (b) of item 3 if the supply is to be GST-free under item 3.[60]

Supply is made to one entity (that is the recipient) but is provided to another entity

194. If the supply is made to one entity but is provided to another entity, the entity to which the supply is provided is the entity that uses or enjoys the supply and is the relevant entity for the purposes of determining whether effective use or enjoyment of the supply takes place outside Australia.

195. If the supply is to be GST-free under item 3, the entity to which the supply is made (that is the recipient) must satisfy paragraph (a) of item 3 and the entity to which the supply is provided must satisfy paragraph (b) of item 3.[61]

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[58] See paragraph 27, and also GSTR 2005/6.
[59] See paragraph 28 and also paragraphs 101 and 186 to 197 in GSTR 2004/7.
[60] The supply must also satisfy the other requirements of item 3. That is, it must not be a supply of work physically performed on goods situated in Australia when the thing supplied is done, or a supply directly connected with real property situated in Australia.
[61] Ibid.

How to determine whether a supply that is made to one entity (that is the recipient) is provided to another entity

196. GST Ruling GSTR 2005/6[62] comprehensively explains, for the purposes of subsection 38-190(3), when a supply is made to one entity but is 'provided to another entity'. As we are seeking to determine in this Ruling if a supply, which is made to one entity (the recipient), is in fact provided to some other entity, the explanation in GSTR 2005/6 as to when a supply is provided to another entity is equally applicable for the purposes of this Ruling.

197. As explained in GSTR 2005/6, a supply, which is made to an entity (the recipient with which the supplier made the agreement for the supply), is provided to another entity if, and to the extent that, in the performance of a service (or in the doing of some other thing), the actual flow of the supply is to that other entity. That is, the contractual flow of the supply is to one entity (the recipient) and the actual flow of the supply is to another entity.[63]

198. To determine for paragraph (b) of item 3 whether a supply is provided to an entity other than the recipient entity, we consider that another entity includes an individual (for example, an employee or a partner), a company, a partnership, a corporate limited partnership or a trust.[64]

Determining whether the supply is provided to another entity

199. To determine whether a supply made to a recipient is provided (or is required to be provided) to another entity, it is necessary to establish the character of the supply that is made. That is, whether it is the supply of a right, service or some other thing.

200. It is also necessary to establish the exact nature of the supply. That is, what is really being supplied.

Characterisation of the supply

201. Correct characterisation of the supply is very important. Only when the supply is properly characterised as a supply of a service, right or some other thing, is it possible to determine whether that supply is provided to another entity.

202. In determining whether a supply is properly characterised as a supply of rights or services or something else it is necessary to consider all the circumstances of the transaction to ascertain its essential character.

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[62] Goods and Services Tax Ruling: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the *A New Tax system (Goods and Services Tax) Act 1999.*

[63] See paragraphs 59 to 62 in the Ruling section, and paragraphs 220 to 225 in the Explanation section of GSTR 2005/6.

[64] See paragraphs 54 to 58 in the Ruling section, and paragraphs 226 to 240 in the Explanation section of GSTR 2005/6.

203. Characterisation of a supply is discussed further at paragraphs 261 to 275 in GSTR 2005/6 with reference to item 2 and subsection 38-190(3). GSTR 2003/8 may also be relevant as it discusses when a supply 'is made in relation to rights' for the purposes of item 4.

The nature of the supply

204. It is also necessary to establish the exact nature of the supply. That is, what is really being supplied (sometimes a shorthand or colloquial description of the supply does not reflect what is really being supplied).

205. A clear understanding of the exact nature of the supply is essential to determining whether that supply is provided to another entity. By determining what is in substance and reality being supplied, it is possible to identify to which entity the supply is provided.

206. The exact nature of a supply in any given situation depends on the facts and circumstances of the supply and the agreement made between the parties. In this regard, it is necessary to look at the whole arrangement for the supply (including the contractual arrangements) and the way in which the supply is carried out. If there is no written contract, other documents such as correspondence between the parties may be useful in establishing the nature of the supply.

207. If a supply is the provision of advice or information which involves work to create, develop or produce that advice or information, (for example, a legal opinion or an audit report), the supply is the performance of services.[65] Thus, in determining whether a supply is provided to another entity regard is to be had to the performance of the services in creating, developing or producing the opinion or audit report and whether those services are provided to another entity.

208. The focal point in working out whether a supply is provided to another entity is the facts and circumstances of the doing of the thing supplied. By the supplier examining what it is required to do and in what circumstances, the supplier is able to objectively determine to whom the supply is provided.

209. With some supplies, it is inherent in the nature of the supply that the supply is provided to a particular entity. For example travel, training or entertainment services are, by their very nature, provided to the individual who travels, or is trained or entertained, respectively.

210. In the case of delivery or freight services where goods from one entity are addressed for delivery to another entity, we consider that the delivery or freight services are provided to that addressee

[65] As explained in GSTR 2000/31 if a supply is the provision of advice or information and the supply involves work to create, develop or produce that information or advice for the recipient, the supply is one of performance of services.

entity.[66] We provide examples which illustrate this approach – see Example 11 (paragraphs 333 to 346, Part III) for freight or delivery services provided to an individual. See Example 20 (paragraphs 426 to 441, Part IV) for freight or delivery services provided to an entity other than an individual. Example 12 (paragraphs 347 to 352, Part III) illustrates the outcome if a resident company contracts another Australian entity to deliver goods to the public at large outside Australia. As illustrated in the examples, this approach produces an outcome consistent with the application of paragraph (b) of item 3 and recognises the inherent practical difficulties in determining the entity that uses or enjoys the supply in these circumstances. This approach is consistent with that taken in GSTR 2005/6 to determine if the supply is provided to another entity for the purposes of paragraph 38-190(3)(b).[67]

211. In the case of other supplies, for example, supplies that involve the supply of legal, accounting, auditing or advertising services, the question of whether the supply is provided to another entity depends on the facts and circumstances in any given case.

212. For example, consider a supply of tax return preparation services made to a company that is not in Australia in relation to the supply for the purposes of paragraph (a) of item 3. If what is really being supplied are services to complete tax returns for particular employees to meet their personal tax obligations, those services are provided to each employee. If, on the other hand, the tax return services are to complete the company's tax return, meeting its tax obligations, the tax return preparation services are provided to the company.

213. In situations where the contractual flow of the supply is to an entity (other than an individual), and it is necessary to determine whether the actual flow of the supply is to another entity (other than an individual), we consider that a strong indicator that the supply is provided to another entity is that the contracting entity has no further interaction with, or participation in, the provision of the supply beyond contracting and paying for the supply. However, this is subject to the facts and circumstances of the supply not indicating to the contrary. (Refer to Examples 40 and 50, pages 96 and 101 respectively, Part V of the Explanation section.)

214. It is only in limited circumstances that any one fact, or a particular combination of facts, means or indicates that a supply is provided to another entity.

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[66] This does not, however, include the delivery of goods that are generically addressed to, for example, 'The Householder' or are for delivery to the public at large. It also does not include the situation where an entity's goods are simply freighted or moved from one location to another location. In that case the circumstances of the particular supply in question must be considered to determine whether the supply is provided to another entity.

[67] See also examples from GSTR 2005/6 which are summarised in Part V – Examples 31 and 32 (Table 1, page 94) and Examples 57 and 58 (Table 2, page 106).

215. The importance of understanding the exact nature of the supply by having regard to the facts and circumstances of the supply is illustrated by the following contrasting examples.

Example 1 – supply of consultancy services made to a resident company and provided to a resident subsidiary with a presence in Australia and outside Australia

216. *An Australian business consultancy firm, OzBiz, is engaged by an Australian parent company, Aus Co, to review the business practices and procedures of its subsidiary entity, Sub Co. At all times during the period over which the service is performed Sub Co is a resident of Australia and carries on business both in Australia, (where it has its head office), and in Papua New Guinea, (where it has a branch office).*

217. *The supply by OzBiz is properly characterised as the supply of a service. A separate review of Sub Co's operations is made by OzBiz – that is, a review of the head office and a review of the Papua New Guinea branch office. The aim of each review is to identify areas where efficiency gains and cost savings may be made by Sub Co with respect to its head office operations and its branch office operations. The service is performed over a period of time and culminates in the production of two reports, one for the management team of the subsidiary's presence in Papua New Guinea and one for the management team of the subsidiary's presence in Australia.*

Paragraph (a) of item 3

218. *The supply of consultancy services by OzBiz is made to Aus Co, a resident entity that is in Australia when the consultancy services are performed. The supply does not therefore satisfy paragraph (a) of item 3 unless subsection 38-190(4) applies.*

Subsection 38-190(4)

219. *The supply of consultancy services by the consultancy firm is a supply under an agreement entered into with a resident entity, Aus Co. Paragraph 38-190(4)(a) is therefore satisfied.*

220. *It is then necessary to consider if paragraph 38-190(4)(b) is satisfied.*

221. *What is being supplied is the service of separately reviewing the business procedures and practice of Sub Co's operations in Australia and in Papua New Guinea to achieve efficiency gains and cost savings. The consultancy services are therefore provided to another entity, Sub Co.*

222. *In accordance with the explanation in Part IV of this Ruling (see paragraphs 394 to 397) Sub Co is present both in Australia and outside Australia when the thing supplied is done.*

223. *To the extent that the supply is for the purposes of Sub Co's presence outside Australia (that is, the Papua New Guinea branch office) the supply is provided to Sub Co outside Australia. To this extent subsection 38-190(4) is satisfied and paragraph (a) of item 3 is satisfied.*

224. *To the extent that the supply is for the purposes of Sub Co's presence in Australia (that is, its Australian head office) the supply is provided to Sub Co in Australia. To this extent subsection 38-190(4) is not satisfied and paragraph (a) of item 3 is not satisfied.*

Paragraph (b) of item 3

225. *As discussed above, the supply of the consultancy services by OzBiz is provided to Sub Co and therefore Sub Co is the entity that uses or enjoys the supply. However, the supply only satisfies paragraph (a) of item 3 to the extent that the supply is for the purposes of Sub Co's presence outside Australia. It is therefore only necessary to consider if paragraph (b) of item 3 is satisfied with respect to this part of the supply. Therefore, it is necessary to determine where effective use or enjoyment of this part of the supply by Sub Co takes place.*

226. *As explained in Part IV (paragraphs 398 to 402), to the extent that the supply is for the purposes of Sub Co's presence outside Australia (that is, its branch in Papua New Guinea), the supply is provided to Sub Co outside Australia and effective use or enjoyment of the supply takes place outside Australia. Therefore, paragraph (b) of item 3 is satisfied.*

Summary

227. *The supply by OzBiz is GST-free under item 3*[68] *to the extent the supply of consultancy services is provided to Sub Co's presence outside Australia (that is, to the extent the consultancy services are for the purposes of the Papua New Guinea branch office).*

228. *The supply by OzBiz is not GST-free under item 3 to the extent the supply is provided to Sub Co's presence in Australia (that is to the extent the consultancy services are for the purposes of the head office in Australia).*

229. *As the supply by OzBiz is partly GST-free and partly taxable apportionment arises. Apportionment is explained in Part VI (paragraphs 452 to 527).*

230. The above example is contrasted with the following two examples.

[68] The requirement in item 3 that the supply is not a supply of work physically performed on goods situated in Australia and is not a supply directly connected with real property situated in Australia is also satisfied.

Example 2 – supply of consultancy services made and provided to a resident company

231. *Referring back to Example 1, if OzBiz was engaged by Aus Co to review the business practices and procedures of Sub Co to assess compliance by Sub Co with Aus Co's reporting requirements and standards the service is made, and provided, to Aus Co; it is not a service which is provided to Sub Co.*

232. *As the service is made to Aus Co, which is in Australia when the consultancy services are performed, paragraph (a) of item 3 is not satisfied. As the supply is also provided to Aus Co in Australia subsection 38-190(4) does not apply to extend the application of paragraph (a) of item 3. Therefore, the supply is not GST-free under item 3.*

233. *While it is unnecessary to consider paragraph (b) of item 3, it is also not satisfied. The supply is provided to Aus Co and therefore Aus Co is the entity that uses or enjoys the supply. As the supply is for the purposes of Aus Co's presence in Australia, it is therefore provided to Aus Co in Australia and thus effective use or enjoyment of the supply by Aus Co does not take place outside Australia.*

Example 3 – supply of promotion services conducted overseas but made and provided to an entity in Australia

234. *Aus Promos is engaged by Aussie Reds to promote Aussie Reds' wines overseas. Both Aus Promos and Aussie Reds are Australian resident companies that only carry on business in Australia; that is, they have no presence outside Australia.*

235. *Aus Promos is responsible for the organisation and doing of all things necessary to promote and market the wines to potential customers overseas. The supply of the promotional services by Aus Promos is mainly performed overseas. As part of its promotional services Aus Promos contracts an Australian wine expert to explain the wines and to make sales pitches to attendees at the overseas events.*

Supply by Aus Promos to Aussie Reds

236. *The supply of promotional services by Aus Promos to Aussie Reds is made and provided to Aussie Reds, an Australian company, that is in Australia when the services are performed.*

237. *The supply by Aus Promos does not satisfy paragraph (a) of item 3 and is not GST-free under item 3.*[69] *(Note: although the services by Aus Promos are mainly performed outside Australia this does not alter the outcome. Aussie Reds, the entity to which the supply is made, is in Australia in relation to the supply.)*

238. *While it is unnecessary to consider paragraph (b) of item 3, it is also not satisfied. The supply is provided to Aussie Reds and therefore*

[69] See paragraphs 64 to 66 and 333 to 379 in GSTR 2004/7.

Aussie Reds is the entity that uses or enjoys the supply. As the supply is for the purposes of Aussie Reds, which only has a presence in Australia, it is provided to Aussie Reds in Australia and thus effective use or enjoyment of the supply by Aussie Reds does not take place outside Australia. (When effective use or enjoyment of a supply by a company takes place outside Australia is explained in Part IV (paragraphs 386 to 402 and 442 to 447) of the Explanation section.)

Supply by the wine expert to Aus Promos

239. *The supply by the wine expert is made to Aus Promos as it is Aus Promos, not Aussie Reds, that has contracted the wine expert to supply speaking services at the events.*

240. *It is, however, necessary to consider if those services are provided to another entity such as the persons who attend the events or, to Aussie Reds as its wines are being promoted and marketed by the wine expert.*

241. *The nature of the wine expert's speaking services is not the professional development of persons who attend the events. Rather, the nature of the supply is promoting and marketing Aussie Reds wines. While knowledge and information about the wine may flow to the persons attending events, this is only a by-product of the supply of speaking services and it does not alter the true nature of the service, that is, the promotion and marketing of Aussie Reds wines. The speaking services supplied by the wine expert are made to Aus Promos but are provided to Aussie Reds.*

242. *As the supply by the wine expert is made to an Australian resident company (Aus Promos) that is in Australia when the services are performed and is provided to an Australian resident company (Aussie Reds) which is also in Australia when the services are performed the supply does not satisfy the requirements of paragraph (a) of item 3 and subsection 38-190(4) does not apply to extend the application of paragraph (a) of item 3.*

243. *While it is unnecessary to consider paragraph (b) of item 3, it is also not satisfied. The supply is provided to Aussie Reds and therefore Aussie Reds is the entity that uses or enjoys the supply. As the supply is for the purposes of Aussie Reds, which only has a presence in Australia, it is provided to Aussie Reds in Australia and thus effective use or enjoyment of the supply by Aussie Reds does not take place outside Australia. (When effective use or enjoyment of a supply by a company takes place outside Australia is explained in Part IV (paragraphs 386 to 402 and 442 to 447) of the Explanation section.)*

244. *The supply of speaking services by the wine expert is therefore not GST-free under item 3.*

Determining whether a supply made to an employer is provided to an employee

245. To determine whether a supply, which is made to an employer, is provided to an employee, it is essential to examine the nature of the supply closely. By examining what is really being supplied and how that supply is carried out, it is possible to establish to whom the service or other thing is provided, that is, the employer or another entity, the employee. If the supply is provided to the employee, it is the employee that is the relevant entity for the purposes of determining where effective use or enjoyment of that supply takes place.

246. Where an employee is involved with the provision of a supply, the weight to be given to that fact differs according to the circumstances of the supply in question. In some situations, contact by an employee with the supplier might indicate by itself, or together with other facts, that the supply is provided to that employee. For example, an employee meets with an accountant to prepare his or her tax return. In other circumstances, contact by an employee with a supplier may simply be to facilitate the provision of the supply to the employer. This is the case where, for example, an employee interacts with a law firm in circumstances where the firm is giving legal advice concerning a business venture of the employer.

247. In each of the following examples, the supply is made to the employer but is, in our view, provided to the employee. The employee is therefore the entity that uses or enjoys the supply and is the relevant entity for the purposes of determining where effective use or enjoyment of the supply takes place. The examples are as follows:

- the employer contracts with an entity to provide training to its employees. See Example 9, paragraphs 316 to 321, Part III, and Examples 26 and 27, Table 1, pages 89 and 90 respectively, Part V, of the Explanation section;
- the employer purchases tickets to entertainment or sporting events for an employee. See Example 9, paragraphs 316 to 321, Part III, and Example 23, Table 1, 88, Part V, of the Explanation section;
- the employer contracts with an entity to provide travel to an employee. See Example 9, paragraphs 316 to 321, Part III of the Explanation section;
- the employer contracts with an accounting firm to provide tax return preparation services to its employees. See Example 7, paragraphs 300 to 306, Part III of the Explanation section; and
- the employer contracts for an employee's goods to be stored. See Example 24, Table 1, page 88, Part V of the Explanation section.

Determining whether a supply is provided to an agent

248. Sometimes an entity makes an acquisition through an agent. If all the agent does is to arrange on behalf of the entity for the supply to be made and provided to the entity, the supply is not provided to the agent.[70] (See Example 22, Table 1, page 87, Part V of the Explanation section.)

Determining when a supply is provided to a partner of a partnership

249. A partnership, although not a separate legal entity from the persons that form the partnership, is treated, for GST purposes, as if it were a separate entity.[71] Typically, partners in a partnership are individuals and companies and, therefore, a supply may be made to a partnership but may be provided to, for example, an individual partner.

250. Referring to the examples listed at paragraph 247, just as the supplies contracted for by an employer are provided to the employee so too are such supplies contracted for by the partnership in respect of the partners provided to an individual partner. The partner would therefore be the relevant entity for the purposes of determining where effective use or enjoyment of the supply takes place. See Example 28, Table 1, 90, Part V of the Explanation section.

Supply is partly provided to one entity and partly provided to another entity

251. If a supply is partly provided to one entity and partly provided to another entity, each entity uses or enjoys its respective part of the supply. Therefore, each entity is relevant to determining whether effective use or enjoyment of its part of the supply takes place outside Australia.

252. In this situation a supply may be partly provided to an entity in Australia and partly provided to an entity outside Australia resulting in the supply being partly used or enjoyed in Australia and partly used or enjoyed outside Australia. Refer to Example 59, paragraphs 456 to 464, Part VI of the Explanation section.

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[70] See paragraphs 126 and 127 in the Ruling section, and paragraphs 471 to 481 in the Explanation section, of GSTR 2005/6 for a discussion regarding supplies provided to agents.

[71] Refer to paragraph 184-1(1)(e).

Supply is provided to all entities (if there is more than one)

253. If the supply is provided to more than one entity but it is not possible to identify separate parts of the supply flowing to each entity, all entities use or enjoy the whole of the supply. Therefore, each entity is relevant to determining whether effective use or enjoyment of the supply takes place outside Australia. If all entities, to which the supply is provided, do not effectively use or enjoy the supply outside Australia the supply is not GST-free under item 3. See Example 62, paragraphs 484 to 489, Part VI of the Explanation section.

Further examples

254. In Part V of the Explanation section (paragraphs 449 to 451, page 86) we provide further examples showing how to determine the entity to which the supply is provided and therefore the entity that uses or enjoys the supply. The examples draw on examples from GSTR 2005/6 and give the GST outcomes under items 2 and 3 for comparative purposes.

Part III – determining whether effective use or enjoyment of a supply by an individual takes place outside Australia

255. An individual is the entity that effectively uses or enjoys a supply (or part of a supply) if either:

(a) the supply is made and provided to an individual (or is made and provided in part to an individual); or

(b) the supply is made to one entity but is provided to another entity who is an individual (or is provided in part to another entity who is an individual).

256. Once it is determined that a supply is provided to an individual it is necessary to consider if effective use or enjoyment of the supply by that individual takes place outside Australia.

257. For the reasons explained in Part I of the Explanation section, we consider that effective use or enjoyment of a supply by an individual takes place outside Australia (and therefore paragraph (b) of item 3 is satisfied) if the supply is provided to that individual outside Australia; that is, the supply is not provided to the individual in Australia. If the supply is provided to the individual in Australia, effective use or enjoyment of the supply does not take place outside Australia and paragraph (b) of item 3 is not satisfied. (This means that if it has already been determined, for the purposes of paragraph 38-190(3)(b) or (4)(b), that a supply is provided to an individual in Australia or outside Australia respectively, it follows that effective use or enjoyment of the supply also takes place at that location.)

258. In this part we discuss how to determine:

- when provision of a supply occurs; and
- whether a supply is provided to an individual in Australia or outside Australia.

Provision of the supply occurs as and when the thing supplied is done

259. A supply is provided as and when the thing supplied is done. This is the relevant time for determining whether a supply is provided to an entity in Australia or outside Australia and thus whether effective use or enjoyment of the supply takes place outside Australia.

260. Consistent with views expressed in GSTR 2004/7[72] and GSTR 2000/31[73] as to when the thing supplied is done we consider that:

- *if the thing provided is a service* – provision of that service occurs during the period of time when the service is performed;
- *if the thing provided is advice or information and the supply involves work to create, develop or produce that information or advice for the entity* – the thing provided is the performance of services. The provision of the service occurs when the service is performed and includes the period of time during which the advice is prepared, produced or created, as the case may be;
- *if the thing provided is an instantaneous provision of advice or information* – the provision of that thing occurs at the time at which the advice or information is instantaneously provided;
- *if the thing provided is the creation, grant, transfer, assignment or surrender of a right* – the provision of that thing occurs at the time that the right is created, granted, transferred, assigned or surrendered; and
- *if the thing provided is the entry into, or release from, an obligation to do anything, or refrain from an act, or to tolerate an act or situation* – the provision of that thing occurs at the time at which the obligation is entered into or the release is effected.

261. In the case of a service performed over time, for example, provision of advice or information created, developed or produced over time, the relevant period for determining whether any part of the supply is provided to an entity in Australia or outside Australia, (and thus effectively used or enjoyed by the entity in Australia or outside Australia respectively), is the period during which the advice or information is created, developed or produced.

How to determine whether a supply is provided to an individual in Australia or outside Australia

262. To determine whether effective use or enjoyment of a supply by an individual takes place outside Australia we determine whether there is provision of the supply to the individual in Australia or outside Australia. Only where there is provision of a supply to an individual

[72] Goods and services tax: in the application of items 2 and 3 and paragraph (b) of item 4 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*: when is a 'non-resident' or other 'recipient' of a supply 'not in Australia when the thing supplied is done'? when is 'an entity that is not an Australian resident' 'outside Australia when the thing supplied is done'?

[73] Goods and services tax: supplies connected with Australia.

outside Australia does effective use or enjoyment take place outside Australia.

263. To determine whether there is provision of a supply to an individual in Australia or outside Australia we distinguish between resident and non-resident individuals, according to whether they are physically in or outside Australia when the thing supplied is done. Distinguishing between individuals on the basis of their residency status and physical presence at a location is consistent with the approach taken for individuals in GSTR 2004/7 and GSTR 2005/6.[74]

Resident individual physically in Australia when the thing supplied is done

264. If a supply is provided (or is required to be provided) to a resident individual who is physically in Australia when the thing supplied is done, the supply is provided to that individual in Australia.

265. This is consistent with the underlying presumption in item 3 (as it applies to resident individuals) that a supply is treated as being consumed by a resident individual in Australia, if that individual is physically in Australia when the thing supplied is done.

266. As the supply is provided to the individual in Australia effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3. (See Flowchart 2, page 30 of the Ruling section.)

Resident individual not physically in Australia when the thing supplied is done

267. If a supply is provided (or is required to be provided) to a resident individual who is not physically in Australia when the thing supplied is done, it is necessary to determine whether the presence of the resident individual outside Australia is integral to, as distinct from being merely coincidental with, the provision of the supply. (We explain at paragraphs 280 to 376 when a resident individual's presence outside Australia is integral to the provision of the supply.)

268. If a resident individual's presence outside Australia is integral to, as distinct from being merely coincidental with, the provision of the supply, we consider that the supply is provided to that individual outside Australia. As the supply is provided to the individual outside Australia effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is satisfied. The supply is GST-free under item 3 if the other requirements of item 3 are satisfied.

269. Conversely, if a resident individual's presence outside Australia is not integral to the provision of the supply, we consider

[74] Goods and Services Tax Ruling: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the *A New Tax system (Goods and Services Tax) Act 1999.*

that the supply is provided to the individual in Australia. As the supply is provided to the individual in Australia, effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3. (See Flowchart 2, page 30 of the Ruling section.)

270. This approach ensures that a supply to a resident individual is not GST-free merely because the individual is coincidentally located outside Australia when the thing supplied is done. It is also consistent with the approach taken if a non-resident individual is coincidentally located in Australia when the thing supplied; that is, the supply is not taxable merely because the non-resident individual is coincidentally located in Australia when the thing supplied is done.

271. Apportionment is required if, for part of the time when the thing supplied is done, a resident individual is physically outside Australia and the individual's presence outside Australia is integral to the provision of the supply. That part of the otherwise taxable supply[75] is GST-free. Apportionment is discussed at paragraphs 452 to 527, Part VI of the Explanation section.

Non-resident individual not physically in Australia when the thing supplied is done

272. If a supply is provided (or is required to be provided) to a non-resident individual who is not physically in Australia when the thing supplied is done, the supply is provided to that individual outside Australia.

273. This is consistent with the underlying presumption in item 2 and item 3 (as it applies to non-resident individuals) that a supply is treated as being consumed by a non-resident individual outside Australia, if that individual is not physically in Australia when the thing supplied is done.

274. As the supply is provided to the individual outside Australia effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is therefore satisfied and the supply is GST-free under item 3 if the other requirements of that item are satisfied. (See Flowchart 3, page 31.)

Non-resident individual physically in Australia when the thing supplied is done

275. If a supply is provided (or is required to be provided) to a non-resident individual who is physically in Australia when the thing supplied is done, it is necessary to determine whether the presence of the non-resident individual in Australia is integral to, as distinct from being merely coincidental with, the provision of the supply. (We explain at paragraphs 280 to 376 when a non-resident individual's presence in Australia is integral to the provision of the supply.)

[75] Assuming that the requirements of section 9-5 are otherwise satisfied.

276. If a non-resident individual's presence in Australia is integral to, as distinct from being merely coincidental with, the provision of the supply, we consider the supply is provided to that individual in Australia. As the supply is provided to the individual in Australia effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.

277. Conversely, if a non-resident individual's presence in Australia is not integral to the provision of the supply, we consider that the supply is not provided to that individual in Australia; it is provided to the non-resident individual outside Australia. As the supply is provided to the non-resident individual outside Australia, effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is therefore satisfied and the supply is GST-free under item 3 if the other requirements of item 3 are satisfied. (See Flowchart 3, page 31.)

278. This approach ensures that a supply to a non-resident individual is not taxable merely because the non-resident individual is coincidentally located in Australia when the thing supplied is done.

279. Apportionment is required if, for part of the time when the thing supplied is done, a non-resident individual is physically in Australia and the individual's presence in Australia is integral to the provision of the supply. That part of the supply is taxable.[76] Apportionment is discussed at paragraphs 452 to 527, Part VI of the Explanation section.

How to determine whether an individual's presence at a particular location is integral to the provision of the supply

280. It is necessary to consider this section if a supply is provided to:

- a resident individual who is physically outside Australia when the thing supplied is done (see paragraphs 267 to 271); or
- a non-resident individual who is physically in Australia when the thing supplied is done (see paragraphs 275 to 279).

281. A supply is provided to an individual at a particular location (that is, outside Australia if a resident or in Australia if a non-resident), if the facts and circumstances of the supply show that the individual's presence at that location is integral to, as distinct from being merely coincidental with, the provision of the supply.

282. Determining whether an individual's presence at a particular location is integral to the provision of the supply and not merely coincidental requires an examination of the facts and circumstances of the supply. Indicators that an individual's presence at a particular location is integral to the provision of the supply include:

[76] Assuming that the requirements of section 9-5 are otherwise satisfied.

- the need for the supply arises from the individual's presence at that location; or
- the presence of the individual at that location is integral to the performance, receipt or delivery of the supply.

The need for the supply arises from the individual's presence at that location

283. If the need for a supply to be provided to an individual arises from the individual's presence at a particular location we consider that the supply is provided to the individual at that location.

284. Some examples of supplies where the need for the supply arises from an individual's presence at a particular location are as follows:

- a supply of immigration advice to a non-resident individual who wants to extend his or her stay in Australia;
- a supply of customs broker services to a non-resident individual who is in Australia and requires the services of a customs broker to enter goods for home consumption in Australia;
- a supply of legal services which are provided to an individual at a location in relation to an offence committed by that individual while at that location. See Examples 4, (paragraphs 286 to 290), 5 (paragraphs 291 to 296) and 6 (paragraphs 297 to 298), Part III of the Explanation section; and
- a supply of repair services which are provided to an individual at a location to repair a piece of equipment (for example a laptop, including software) while at that location.

285. We set out below in more detail examples of supplies, the circumstances of which indicate, in our view, that the need for the supply arises from the individual's presence at that location.

Example 4 – supply of legal services to a resident individual physically located outside Australia

286. *Jane, a resident individual of Australia, is on holidays in New Zealand and, while there, commits an offence. While in New Zealand Jane engages an Australian solicitor to supply her with legal services.*

Paragraph (a) of item 3

287. *The supply of legal services is made to Jane who is not physically present in Australia when the thing supplied is done (that is*

the period during which the legal services are performed). The supply therefore satisfies paragraph (a) of item 3.[77]

Paragraph (b) of item 3

288. *The supply of legal services is provided to Jane and Jane is the entity that uses or enjoys the supply. Therefore, it is necessary to determine where use or enjoyment of the supply by Jane takes place.*

289. *The legal services are necessitated by Jane's presence in New Zealand and therefore her presence in New Zealand is integral to the provision of the supply. The legal services are therefore provided to Jane outside Australia and the effective use or enjoyment of the supply of legal services by Jane takes place outside Australia. Paragraph (b) of item 3 is satisfied.*

290. *The supply to Jane is therefore GST-free under item 3.*[78]

Example 5 – referring to Example 4, Jane's parents engage the services of the Australian solicitor

291. *Referring to Example 4, this example explains the outcome if Jane's parents, instead of Jane, engage the legal services of the solicitor.*

Paragraph (a) of item 3

292. *The supply of the legal services is made to Jane's parents who are physically present in Australia when the thing supplied is done (that is the period during which the legal services are performed). The supply does not satisfy paragraph (a) of item 3 unless subsection 38-190(4) applies.*[79]

Subsection 38-190(4)

293. *Paragraph 38-190(4)(a) is satisfied as the supply is made under an agreement with resident individuals (Jane's parents).*

294. *It is then necessary to consider if paragraph 38-190(4)(b) is satisfied. Paragraph 38-190(4)(b) is only satisfied if the supply of legal services is provided to another entity outside Australia.*

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[77] See paragraphs 221 to 228 in GSTR 2004/7 which explain when an individual is in Australia for the purposes of item 3. If an individual is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied.

[78] The requirement in item 3 that the supply is not a supply of work physically performed on goods situated in Australia and is not a supply directly connected with real property situated in Australia is also satisfied.

[79] See paragraphs 221 to 228 in GSTR 2004/7 which explain when an individual is in Australia for the purposes of item 3. If an individual is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied. See paragraphs 186 to 197 which explain subsection 38-190(4).

295. *The supply of legal services is provided to Jane and those services are provided to Jane outside Australia. As explained at paragraph 289, Jane's presence outside Australia is integral to the supply as the need for the supply arises from Jane's presence outside Australia. The supply is therefore provided to Jane, another entity, outside Australia and paragraph 38-190(4)(b) is satisfied. Subsection 38-190(4) applies and the supply of legal services satisfies paragraph (a) of item 3.*

Paragraph (b) of item 3

296. *Paragraph (b) of item 3 is satisfied and the supply is therefore GST-free under item 3.*[80] *See explanation at paragraphs 288 to 290.*

Example 6 – referring to Example 4 or 5, the solicitor continues to provide legal services following Jane's return to Australia

297. *Referring to Examples 4 or 5, this example explains the outcome if the solicitor continues to provides legal services to Jane following her return to Australia.*

298. *If the solicitor continues to provide services to Jane in relation to this matter after she returns to Australia, the supply of legal services no longer satisfies either paragraph (a) or (b) of item 3 (irrespective of whether the supply is made to Jane or Jane's parents) and to this extent the supply of the legal services is not GST-free. Paragraph (a) of item 3 is not satisfied as Jane is physically in Australia when the service is performed*[81] *and subsection 38-190(4) does not apply. Paragraph (b) of item 3 is not satisfied as the supply of legal services is provided to Jane in Australia and to this extent effective use or enjoyment of the supply does not take place outside Australia. Therefore, to the extent legal services are supplied following Jane's return to Australia the supply is not GST-free under item 3.*

299. The next example illustrates that knowledge of the residence status of an individual to whom the supply is provided is unnecessary if it is clear in any case that a supply is provided to an individual at a particular location.

Example 7 – preparation of foreign tax returns for employees of a non-resident company who are working in Australia

300. *An Australian resident accounting firm enters into an arrangement with a non-resident company to complete tax returns for the non-resident company's employees working in Australia on*

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[80] The requirement in item 3 that the supply is not a supply of work physically performed on goods situated in Australia and is not a supply directly connected with real property situated in Australia is also satisfied.

[81] See paragraphs 221 to 228 in GSTR 2004/7 which explain when an individual is in Australia for the purposes of item 3. If an individual is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied.

secondment with a client of the non-resident company. The non-resident company does not carry on business in Australia through a place of its own or though an agent.

301. *Each employee is available to answer questions and to provide necessary information. The returns are completed and signed by each employee while the employee is in Australia.*

Paragraph (a) of item 3

302. *The supply of tax return services is made to a non-resident company that is not in Australia when the thing supplied is done (that is the period during which the services of preparing the tax returns are performed).*[82] *The supply therefore satisfies paragraph (a) of item 3.*

Paragraph (b) of item 3

303. *What is being supplied is the service of preparing the tax returns of the employees. The nature of the service is such that the supply of tax return preparation services is provided, in part, to each employee. As the services are provided to each employee, it is each employee that uses or enjoys the supply. Therefore, it is necessary to determine where use or enjoyment of the supply by each employee takes place.*

304. *Each employee is in Australia when the tax return services are performed. On the facts their presence in Australia is integral to the provision of the supply. It is not merely coincidental to the provision of the supply. The supply is therefore provided to each employee in Australia.*

305. *As the supply is provided to each employee in Australia effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3. (See also Example 29, Table 1, page 91, Part V of the Explanation section.)*

306. *If the finalised returns are sent to the non-resident company and are on-forwarded to its employees in Australia, this does not alter the nature of the supply and the fact that the supply of tax return preparation services is provided to the employees in Australia.*

Example 8 – supply of services of taking messages, telephone calls, mail and faxes by a resident company to a resident sole trader who is outside Australia when the services are performed

307. *Aus Co is a resident of Australia. Aus Co has been contracted by Anna, a sole trader, to take messages, handle telephone calls, mail and faxes on her behalf while she is on holiday in France. Aus Co in effect operates as the postal address and telephone contact for Anna's business while she is on holidays. Aus Co does not otherwise*

[82] See paragraphs 333 to 372 in GSTR 2004/7 which explain when a company is in Australia for the purposes of item 3. If a company is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied.

conduct any business on behalf of Anna; it merely forwards on messages, faxes and phone calls to her in France. Once Anna returns to Australia the services of Aus Co are no longer required.

Paragraph (a) of item 3

308. *The supply of services by Aus Co is made to Anna who is physically located outside Australia when the thing supplied is done (that is the period during which the services are performed). The supply therefore satisfies paragraph (a) of item 3.*[83]

Paragraph (b) of item 3

309. *The supply of services is provided to Anna and Anna is the entity that uses or enjoys the supply. Therefore, it is necessary to determine where use or enjoyment of the supply by Anna takes place.*

310. *As Anna is a resident of Australia who is outside Australia when the services are performed it is necessary to determine if Anna's presence outside Australia is integral to, as opposed to being merely coincidental with, the supply provided by Aus Co. The circumstances in which the supply by Aus Co is provided to Anna indicate that the need for the supply arises from Anna's presence outside Australia. On this basis Anna's presence outside Australia is integral to the supply. The supply is therefore provided to Anna outside Australia and effective use or enjoyment of the supply by her takes place outside Australia. Paragraph (b) of item 3 is satisfied.*

311. *The supply by Aus Co to Anna is therefore GST-free under item 3.*[84]

The presence of the individual at that location is integral to the performance, receipt or delivery of the supply

312. If the presence of the individual at a particular location is integral to the performance, receipt or delivery of the supply we consider that the supply is provided to the individual at that location.

313. Some examples of supplies where the presence of the individual at that location is integral to the performance, receipt or delivery of the supply, are as follows:

- supply of training or entertainment – the services are to be received by the individual at that location. (See Example 9, paragraphs 316 to 321);

[83] See paragraphs 221 to 228 in GSTR 2004/7 which explain when an individual is in Australia for the purposes of item 3. If an individual is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied.

[84] The requirement in item 3 that the supply is not a supply of work physically performed on goods situated in Australia and is not a supply directly connected with real property situated in Australia is also satisfied.

- supply of travel – the travel is to be undertaken by the individual at that location. (See Example 9, paragraphs 316 to 321);
- supply of hairdressing or other similar services applied to the person – the services are to be performed on the individual at that location; and
- supply of assessment services – the assessment of the individual is undertaken at that location and the individual is required to be present for the assessment.

314. We set out below in more detail examples of supplies, the circumstances of which indicate, in our view, that the presence of the individual is integral to the performance, receipt or delivery of the supply.

315. The next example illustrates that knowledge of the residence status of an individual to whom the supply is provided is unnecessary if it is clear in any case that a supply is provided to an individual at a particular location.

Example 9 – supply of face to face training and entertainment provided to a non-resident employee of a non-resident company

316. *A non-resident US company contracts with an Australian firm to provide training to its employee, Kris (also a non-resident). Kris is required to attend the training in Melbourne. As Kris is in Australia over a weekend the company also purchases a ticket for Kris to attend a football game and take a bus tour of the great ocean road for Kris.*

317. *The non-resident company does not carry on business in Australia through a place of its own or though an agent.*

Paragraph (a) of item 3

318. *Each of the supplies mentioned (that is the training, the ticket to the sporting event and the bus tour) are all made to the non-resident company that is not in Australia in relation to the supply when the thing supplied is done. The supply therefore satisfies paragraph (a) of item 3.*[85]

Paragraph (b) of item 3

319. *With respect to the training what is being supplied is the teaching and tutoring of Kris. It is in the nature of such training services that it is Kris who is trained, not her employer, and it is therefore Kris who is provided with the training. Similarly with the supply of travel and entertainment it is Kris that travels and is*

[85] See paragraphs 333 to 372 in GSTR 2004/7 which explain when a company is in Australia for the purposes of item 3. If a company is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied.

entertained, respectively. These services are of a kind that can only be provided to the individual, Kris. The flow of the actual services of training, travel and entertainment is to Kris and not to her non-resident employer.

320. *Each supply is therefore provided to Kris and Kris is the entity that uses or enjoys the supply. Therefore, it is necessary to determine where use or enjoyment of each supply by Kris takes place.*

321. *The contract with the supplier of the training course requires Kris to attend the training course in Melbourne. As Kris' presence in Australia is integral to her receiving the training the supply is provided to Kris in Australia. Similarly Kris' presence in Australia is integral to partaking of the sporting event and undertaking the travel. Each supply is therefore provided to Kris in Australia and effective use or enjoyment of each of supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied with respect to any supply and therefore the supplies of training, entertainment and travel are not GST-free under item 3.*

Example 10 – supply of life coaching services made to a company but provided to its employees

322. *Aus Co is contracted by a resident company to provide life coaching to high performing employees at its branch in New Zealand. The purpose of the coaching is to groom the employee to take on more senior roles within the company.*

323. *The life coaching takes place at the employee's workplace in New Zealand. The employees are non-resident individuals.*

Paragraph (a) of item 3

324. *The supply of life coaching services is made to a resident company that is in Australia in relation to the supply when the thing supplied is done (that is the period during which the life coaching services are performed). The supply does not satisfy the requirements of paragraph (a) of item 3 unless subsection 38-190(4) applies.*[86]

Subsection 38-190(4)

325. *Paragraph 38-190(4)(a) is satisfied as the supply is made under an agreement with a resident company.*

326. *Paragraph 38-190(4)(b) is only satisfied if the supply is provided to another entity outside Australia. The supply by Aus Co is made to the resident employer company. However, it is the employee that is receiving the development through the life coaching. We*

[86] See paragraphs 333 to 373 in GSTR 2004/7 which explain when a company is in Australia for the purposes of item 3. If a company is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied. See paragraphs 186 to 197 which explain subsection 38-190(4).

therefore consider that the supply of life coaching is provided to each employee.

327. *As each employee is a non-resident individual who is outside Australia when the supply is performed the supply is provided to each employee outside Australia. Paragraph 38-190(4)(b) is satisfied. Subsection 38-190(4) applies and the supply of life coaching services satisfies paragraph (a) of item 3. (Although the facts state each individual employee is a non-resident the result would not alter if the employee was in fact a resident individual who is provided with life coaching outside Australia. This is because the individual's presence outside Australia is integral to, and not merely coincidental with, the supply provided. Therefore, it is unnecessary to determine the residence status of an individual if in any case the individual's presence at a particular location is integral to, and not merely coincidental with, the provision of a supply.)*

Paragraph (b) of item 3

328. *The supply is provided to each employee and each employee is the entity that uses or enjoys the supply. Therefore, it is necessary to determine where use or enjoyment of the supply by each employee takes place.*

329. *As discussed at paragraph 327, the supply is provided to each employee outside Australia. Therefore the effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is satisfied. The supply is GST-free under item 3.*[87]

A supply of certain freight or delivery services

330. In the case of delivery or freight services which are provided to an individual in the circumstances described at paragraph 210, we accept those services are provided to that individual in Australia, if the goods are addressed to the individual in Australia. Alternatively, if the goods are addressed to the individual outside Australia, we accept that those services are provided to that individual outside Australia. This approach recognises the inherent practical difficulties in otherwise determining whether the supply is provided to an entity in Australia or outside Australia and thus whether effective use or enjoyment of the supply takes place outside Australia particularly if the freight or delivery services are the subject of subcontract arrangements. Further, this approach does not require the residency status of the individual to whom the goods are addressed to be determined.

331. This approach does not, however, apply to the delivery of goods that are generically addressed to 'The Householder' or are for delivery to the public at large. In that case we consider the supply is made and

[87] The requirement in item 3 that the supply is not a supply of work physically performed on goods situated in Australia and is not a supply directly connected with real property situated in Australia is also satisfied.

provided to the entity seeking to have the goods delivered – see Example 12, paragraphs 347 to 352. It also does not apply to circumstances where an individual's goods are freighted or moved from one location to another location. For example, where the individual is relocating overseas and the individual's household goods are freighted to an address overseas. The circumstances of the particular supply in question must be considered to determine the entity to which the supply is provided and whether the supply is provided to that entity in Australia or outside Australia and thus whether effective use or enjoyment of the supply takes place outside Australia.

332. The following example illustrates the approach where goods from a resident entity are sent to a non-resident individual. This can be contrasted with Example 12 (which follows) where the delivery is to the public (individuals) at large.

Example 11 – international freight exports – domestic leg of transport – supply of transport services (freight services only) made to a resident company and provided to another entity

333. *An Australian exporter sells goods to a Japanese customer on delivered duty paid terms. The exporter is therefore obliged to deliver the goods to the Japanese customer at the named place of destination, Tokyo. The Japanese Customer takes delivery of the goods in Tokyo.*

334. *The Australian exporter contracts with an Australian airline, Aus Air Freight, to transport the goods from Adelaide to Tokyo. Aus Air Freight contracts with an Australian transport supplier, Aus Transport, to undertake the domestic leg of the transport of the goods from Adelaide to Sydney.*

335. *Aus Transport supplies Aus Air Freight with domestic transport services. Aus Transport moves the goods from Adelaide to Sydney on behalf of Aus Air Freight. The supply by Aus Transport is not covered by item 5 of section 38-355 as Aus Transport is not the supplier of the international transport of the goods from Australia.*

336. *Aus Transport arranges with the Australian exporter a suitable time to pick up the goods. The transport service occurs over the time from picking up the goods in Adelaide to delivery in Sydney.*

Paragraph (a) of item 3

337. *The supply of domestic transport services by Aus Transport to Aus Air Freight is a supply made to a resident company that is in Australia when the transport services are performed. The supply does not satisfy paragraph (a) of item 3 unless subsection 38-190(4) applies.*[88]

[88] See paragraphs 333 to 373 in GSTR 2004/7 which explain when a company is in Australia for the purposes of item 3. If a company is in Australia in relation to a

Subsection 38-190(4)

338. *The supply of domestic transport services by Aus Transport to Aus Air Freight is a supply under an agreement entered into with a resident. Paragraph 38-190(4)(a) is therefore satisfied.*

339. *It is then necessary to consider if paragraph 38-190(4)(b) is satisfied. Under the export sale terms, the Australian exporter is required to provide the Japanese customer with the services of delivering the goods to the customer at the named place of destination, Tokyo. The Australian exporter effects provision of delivery services to the Japanese customer through Aus Air Freight. Aus Air Freight in turn subcontracts to Aus Transport, part of the provision of delivery services to the Japanese customer.*

340. *On these facts the transport services supplied by Aus Transport to Aus Air Freight are provided to the Japanese customer. Delivery services are required to be provided to the Japanese customer and those services are provided to the customer under various subcontract arrangements.*

341. *However, we recognise that Aus Transport may not be aware of the full circumstances of the supply of transport, as described above, that it makes to Aus Air Freight. At a practical level the transport services supplied by Aus Transport are provided to the addressee, the Japanese customer. Thus, where goods from one entity are addressed for delivery to another entity, we consider that it is reasonable for Aus Transport to conclude that the transport services are provided to the addressee entity. Therefore, the supply of transport services by Aus Transport is provided to another entity, the Japanese customer.*

342. *If the Japanese customer is not in Australia when the transport services are performed by Aus Transport, the supply is provided to the Japanese customer outside Australia and paragraph 38-190(4)(b) is satisfied. However, we recognise that Aus Transport is unlikely to know the specific whereabouts of the Japanese customer at all times during the period when the transport services are performed. At a practical level if the goods are addressed to an entity outside Australia we consider it is reasonable for Aus Transport to conclude that the transport services are provided to that other entity outside Australia. The supply therefore is provided to another entity, the Japanese customer, outside Australia.*

343. *Subsection 38-190(4) is satisfied and therefore paragraph (a) of item 3 is satisfied.*

Paragraph (b) of item 3

344. *The supply is provided to the Japanese customer and the Japanese customer is the entity that uses or enjoys the supply. Therefore, it is necessary to determine where use or enjoyment of the supply by the Japanese customer takes place.*

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supply paragraph (a) of item 3 is not satisfied. See paragraphs 186 to 197 which explain subsection 38-190(4).

345. *To determine whether effective use or enjoyment of the supply takes place outside Australia it is necessary to consider if provision of the supply is to the Japanese customer outside Australia.*

346. *We explain above for the purposes of paragraph 38-190(4)(b) that we consider the supply of delivery or freight services is provided to the Japanese customer outside Australia. Therefore effective use or enjoyment of the supply of the transport services supplied by Aus Transport takes place outside Australia. Paragraph (b) of item 3 is satisfied. The supply of transport services supplied by Aus Transport is therefore GST-free under item 3.*

Example 12 – supply of delivery services made and provided to a resident

347. *Booklovers Inc (a resident company) wants to distribute advertising material in New Zealand to the public at large. Booklovers Inc contracts with Ace Couriers (another Australian company) to distribute the advertising material on its behalf in New Zealand.*

Paragraph (a) of item 3

348. *The supply of delivery services by Ace Couriers is made to a resident company that is in Australia when the delivery services are performed. The supply does not satisfy the requirements of paragraph (a) of item 3 unless subsection 38-190(4) applies.*

Subsection 38-190(4)

349. *Subsection 38-190(4) does not apply. The delivery services are not required to be provided to any entity other than Booklovers Inc. The unsolicited delivery of goods to the public at large is not the provision of delivery services to another entity. The supply of delivery services is therefore made and provided to Booklovers Inc.*

350. *As subsection 38-190(4) does not apply the supply does not satisfy paragraph (a) of item 3.*

Paragraph (b) of item 3

351. *While it is unnecessary to consider paragraph (b) of item 3, it is also not satisfied. The supply is provided to Booklovers Inc and therefore Booklovers Inc is the entity that uses or enjoys the supply.*

352. *As the supply is provided to Booklovers Inc for the purposes of its Australian presence the supply is provided to Booklovers Inc in Australia. Therefore, effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.*

The presence of the individual at that location is not integral to the provision of the supply

353. The following are examples or circumstances in which we consider that the individual's presence at a particular location is not integral to the provision of the supply:

- while a resident individual is on holiday outside Australia, the individual has repairs carried out on his or her car in Australia;[89]
- while a resident individual is on holiday outside Australia the individual has his or her tax return prepared and lodged in Australia (see Example 14, paragraphs 361 to 366, Part III of the Explanation section);
- a service is provided to an individual who is a resident of Australia and, during the period when those services are performed, the individual goes overseas on holiday. While on holiday outside Australia the resident individual checks on the progress of the supply of services or the supplier contacts the resident individual to update the individual on the progress. The need for the supply does not arise from the individual's presence outside Australia and the individual's presence outside Australia is not integral to the performance, receipt or delivery of the supply. (A similar example is Example 25, Table 1, page 89, Part V of the Explanation section); and
- a service is provided to an individual who is a non-resident and, during the period when those services are performed, the individual comes to Australia on holiday. While on holiday in Australia the non-resident individual takes the opportunity to visit the supplier to check on the progress of the supply of services or the supplier contacts the non-resident individual to update the individual on the progress. The need for the supply does not arise from the non-resident individual's presence in Australia and the individual's presence in Australia is not integral to the performance, receipt or delivery of the supply. (A similar example is Example 24, Table 1, page 88, Part V of the Explanation section.)

354. We set out below some examples of supplies the circumstances of which indicate, in our view, that the individual's presence at that location when the service is performed is merely coincidental with, and not integral to, the provision of the supply.

[89] Item 3 is also not satisfied as a supply of repairs on goods in Australia is a supply of work physically performed on goods situated in Australia.

Example 13 – supply of private investigation services to a resident individual physically located outside Australia

355. *Peter, a resident individual, engages an Australian private investigator to try to find a relative who may be either in Australia or outside Australia. Peter is on holidays outside Australia during part of the time when those services are provided to him. The private investigator provides weekly updates via email to Peter on the progress he is making in finding the missing relative.*

Paragraph (a) of item 3

356. *The supply of private investigation services by the private investigator is made to Peter who is physically located outside Australia for part of the time when the services are being supplied. To the extent that Peter is physically located outside Australia during the period over which the services are being supplied, the supply satisfies paragraph (a) of item 3.*[90]

Paragraph (b) of item 3

357. *The supply is provided to Peter and Peter is the entity that uses or enjoys the supply. Therefore, it is necessary to determine where use or enjoyment of the supply by Peter takes place.*

358. *As Peter is a resident who is physically located outside Australia for part of the time during which the services are performed it is necessary to determine if Peter's presence outside Australia is integral to the supply.*

359. *In the circumstances of this supply Peter's presence outside Australia is not integral to the provision of the supply. Peter's presence outside Australia is merely coincidental with the provision of the supply and the weekly emails to Peter while he is overseas are merely necessitated by his absence from Australia on holiday.*

360. *As Peter's presence outside Australia is not integral to the provision of the supply, the supply is not provided to Peter outside Australia and therefore effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.*

Example 14 – supply of accounting services to a resident individual physically located outside Australia

361. *Matt, a resident individual, engages an accountant to prepare and lodge his income tax return. During the time that his tax return is prepared Matt is overseas on holidays. During this time Matt has a couple of phone calls with the accountant concerning deductions.*

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[90] See paragraphs 221 to 228 in GSTR 2004/7 which explain when an individual is in Australia for the purposes of item 3. If an individual is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied.

Paragraph (a) of item 3

362. *The supply of accountancy services by the accountant is made to Matt who is physically located outside Australia for part of the time when the services are being supplied. To the extent that Matt is physically located outside Australia during the period over which the services are being supplied, the supply satisfies paragraph (a) of item 3.*

Paragraph (b) of item 3

363. *The supply is provided to Matt and Matt is the entity that uses or enjoys the supply. Therefore, it is necessary to determine where use or enjoyment of the supply by Matt takes place.*

364. *As Matt is a resident who is physically located outside Australia during the period when the accounting services are performed it is necessary to determine if Matt's presence outside Australia is integral to the supply or whether it is merely coincidental.*

365. *In the circumstances of this supply Matt's presence outside Australia is merely coincidental with the provision of the supply and the phone calls to/from the accountant while he is overseas are merely necessitated by his absence from Australia on holiday.*

366. *As Matt's presence outside Australia is coincidental with, rather than being integral to, the provision of the supply of accountancy services the supply is not provided to Matt outside Australia. We therefore consider the supply is provided to Matt in Australia and the effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.*

Example 15 – supply of storage services to a non-resident individual physically located in Australia

367. *John, who is a non-resident, has goods stored in Brisbane at Aus Lock-up's storage facility. John comes to Australia on holiday and calls in to check the condition and safety of the goods he has stored at the facility. [Note: it is the supply of a storage service only; it does not give John an interest in real property and is not therefore a supply of real property to John.]*

Paragraph (a) of item 3

368. *The supply of storage services by Aus Lock-up is made to John, a non-resident, who is physically located in Australia for part of the time over which the services are supplied. As John is a non-resident and in Australia it is necessary to consider if John is in*

Australia in relation to the supply.[91] *John is only in Australia in relation to the supply to the extent that he is in contact with the supplier while in Australia and that contact is not minor. As John is only checking on the condition and safety of his stored goods John is not involved with the supply while in Australia and therefore is not in Australia in relation to the supply. Therefore, the supply to John satisfies paragraph (a) of item 3.*

Paragraph (b) of item 3

369. *The supply is provided to John and John is the entity that uses or enjoys the supply. Therefore, it is necessary to determine where use or enjoyment of the supply by John takes place.*

370. *As John is a non-resident who is physically located in Australia for part of the time over which the services are supplied, it is necessary to determine if John's presence in Australia is integral to the supply or whether it is merely coincidental.*

371. *John's presence in Australia during part of the period over which the storage services are provided is merely coincidental with the supply of storage services and is not in any way integral to the supply of those services. In the circumstances of this supply, John merely takes advantage of being in Australia to check on the condition and safety of his stored goods; this does not make his presence in Australia integral to the supply being provided. As John's presence in Australia is not integral to the provision of the supply, the supply is not provided to John in Australia. We therefore consider the supply is provided to John outside Australia at all times and John's effective use or enjoyment of the supply continues to take place outside Australia even though for part of the time he is physically located in Australia. Paragraph (b) of item 3 is satisfied and the supply is GST-free under item 3.*[92]

Example 16 – supply of instantaneous financial advice to a resident individual physically located outside Australia

372. *Belinda, a resident individual, is outside Australia on holiday when she is provided with instantaneous advice over the phone by her accountant in Australia. The advice concerns the public listing of a company in which Belinda may wish to invest.*

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[91] See paragraphs 221 to 228 in GSTR 2004/7 which explain when an individual is in Australia for the purposes of item 3. If an individual is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied.

[92] The requirement in item 3 that the supply is not a supply of work physically performed on goods situated in Australia and is not a supply directly connected with real property situated in Australia is also satisfied.

Paragraph (a) of item 3

373. *The supply of advice is made to Belinda who is not physically in Australia when the thing supplied is done (that is at the time when the advice is instantaneously provided). The supply to Belinda therefore satisfies the requirements of paragraph (a) of item 3.*[93]

Paragraph (b) of item 3

374. *The supply of advice is provided to Belinda and Belinda is the entity that uses or enjoys the supply. Therefore, it is necessary to determine where use or enjoyment of the supply by Belinda takes place.*

375. *As Belinda is a resident individual who is outside Australia when the advice is given to her, it is necessary to consider whether her presence outside Australia is integral to the supply or is merely coincidental. The phone call from the accountant to Belinda overseas is merely necessitated by her absence from Australia on holiday. Belinda's presence overseas at the time when the advice is given is merely coincidental and is not in anyway integral to the supply.*

376. *The effective use or enjoyment of the supply by Belinda does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.*

Later use of a supply by an entity

377. If the nature of a supply is such that the supply is provided to an entity outside Australia and thus effectively used or enjoyed outside Australia, the fact that the results or outcomes of the supply are later used in Australia does not alter the outcome that effective use or enjoyment of the supply takes place outside Australia.

378. For instance, if training services are provided to employees of a resident company who are outside Australia attending the training course, the later use in Australia of the skills and knowledge gained by the employees from those training services does not alter the fact that the training services are provided to the employees outside Australia and thus effective use or enjoyment of those services takes place outside Australia.[94]

379. Similarly, if a supply is provided to an entity in Australia, and that supply is later used outside Australia, that later use does not alter the fact that the supply is provided to that entity in Australia and thus effective use or enjoyment of the supply does not take place outside Australia.

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[93] See paragraphs 221 to 228 in GSTR 2004/7 which explain when an individual is in Australia for the purposes of item 3. If an individual is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied.

[94] See the UK VAT case of *Customs and Excise Commissioners v. G & B Practical Management Development Ltd* [1979] STC 280 as an example of the application of the distinction between the supply of training services to employees in the UK and the later use outside the UK of the skills and knowledge gained by the employees from those training services.

380. The enquiry is one of determining the exact nature of the supply having regard to all the facts and circumstances and then whether that supply, as properly described, is provided to an individual outside Australia or in Australia.

Another entity benefits from the supply

381. If the nature of the supply is such that the supply is provided to an entity outside Australia and thus effective use or enjoyment of the supply takes place outside Australia, this outcome is not altered even if another entity in Australia benefits from the supply.

382. Similarly, if a supply is provided to an entity in Australia, and another entity outside Australia benefits from that supply this does not alter the outcome that the supply is provided to the entity in Australia and thus effective use or enjoyment of the supply does not take place outside Australia.

383. This can occur with, for example, the supply of advertising services. If the advertising services are made and provided to an entity in Australia, the fact that another entity outside Australia also derives a benefit from that supply does not alter the fact that the advertising services are provided to the entity in Australia and effective use or enjoyment of those services does not take place outside Australia.[95]

384. As stated at paragraph 380, the enquiry is one of determining the nature of the supply having regard to all the facts and circumstances of the supply, and then whether the supply, as properly described, is provided to the entity outside Australia or in Australia.

Further examples

385. In Part V of the Explanation section, we provide further examples of supplies provided to individuals and where effective use or enjoyment of the supply takes place. The examples draw on examples from GSTR 2005/6 and give the GST outcome under item 3 (and item 2 for comparative purposes). See Table 1, pages 87 to 93.

[95] See Example 48, 49 and 50, Table 2, pages 102 and 103, Part V of the Explanation section.

Part IV – determining whether effective use or enjoyment of a supply by a company, partnership, corporate limited partnership or trust takes place outside Australia

386. A company, partnership, corporate limited partnership or trust is the entity that effectively uses or enjoys a supply (or part of a supply) if either:

(a) the supply is made and provided to a company, partnership, corporate limited partnership or trust (or is made and provided in part to that entity); or

(b) the supply is made to one entity (whether an individual or an entity other than an individual) but is provided to another entity that is a company, partnership, corporate limited partnership or trust (or is provided in part to another such entity).

387. Once it is determined that the supply is provided to a company, partnership, corporate limited partnership or trust it is necessary to determine whether effective use or enjoyment of the supply by that entity takes place outside Australia.

388. For the reasons explained in Part I of the Explanation section, we consider that effective use or enjoyment of a supply by a company, partnership, corporate limited partnership or trust takes place outside Australia (and therefore paragraph (b) of item 3 is satisfied) if the supply is provided to the entity outside Australia. If the supply is provided to the company, partnership, corporate limited partnership or trust in Australia effective use or enjoyment of the supply does not take place outside Australia and paragraph (b) of item 3 is not satisfied.

389. In this Part we discuss how to determine:

- when provision of a supply occurs; and
- whether a supply is provided to an entity (other than an individual) in Australia or outside Australia.

Provision of the supply occurs when the thing supplied is done

390. A supply is provided as and when the thing supplied is done. This is the relevant time for determining whether a supply is provided to an entity in Australia or outside Australia and thus whether effective use or enjoyment of the supply takes place outside Australia. (Refer paragraphs 259 to 261, Part III of the Explanation section for an explanation of when different types of supplies for example supplies of services, supplies of advice etc. are provided to an entity.)

How to determine whether a supply is provided to a company, partnership, corporate limited partnership or trust in Australia or outside Australia

391. To determine whether there is provision of a supply to a company, partnership, corporate limited partnership or trust in Australia, or outside Australia, it is first necessary to determine whether the entity has a presence in Australia.

392. If a supply is provided to an entity that does not have a presence in Australia (as determined at paragraphs 395 to 397 in accordance with GSTR 2004/7)[96] the supply cannot be provided to that entity in Australia. Therefore, the supply is provided to that entity outside Australia. Effective use or enjoyment of that supply takes place outside Australia and paragraph (b) of item 3 is satisfied.

393. If a supply is provided to an entity that only has a presence in Australia (that is the entity does not have a presence such as a branch outside Australia) the supply cannot be provided to that entity outside Australia. As the supply is provided to that entity in Australia effective use or enjoyment of that supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.

Determining whether a company, partnership, corporate limited partnership or trust has a presence in Australia

394. Unlike an individual, an entity such as a company, partnership, corporate limited partnership or trust does not have a precise physical location. The entity, through its representatives, may be present in more than one location at the same time.

395. Consistent with GSTR 2004/7 we consider that a *company, corporate limited partnership or trust* is in Australia (irrespective of its residency status) if the entity carries on business, (or in the case of an entity that does not carry on business, carries on activities), in Australia at or through a fixed and definite place of its own, or through an agent at a fixed and definite place, for a sufficiently substantial period of time.[97]

396. Additionally (as we state in GSTR 2004/7) a *company or corporate limited partnership* is in Australia if it is incorporated or formed in Australia respectively.[98]

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[96] Goods and services tax: in the application of items 2 and 3 and paragraph (b) of item 4 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*: when is a 'non-resident' or other 'recipient' of a supply 'not in Australia when the thing supplied is done'? when is 'an entity that is not an Australian resident' 'outside Australia when the thing supplied is done'?

[97] Refer to GSTR 2004/7 – paragraphs 230 to 379 (company); paragraphs 412 to 416 (corporate limited partnership); paragraphs 422 to 429 (trust).

[98] Refer to GSTR 2004/7 – paragraphs 333 to 339 (companies) and paragraphs 414 to 416 (corporate limited partnerships).

397. Also as explained in GSTR 2004/7, a partnership is in Australia if the entity carries on business (or in the case of a partnership that is in receipt of ordinary income or statutory income jointly, other activities which generate that income) in Australia at or through a fixed and definite place of its own, or through an agent at a fixed and definite place, for a sufficiently substantial period of time.[99]

Determining where effective use or enjoyment of the supply takes place if the entity that has a presence both in Australia and outside Australia

398. To determine whether effective use or enjoyment of a supply by an entity takes place outside Australia we determine whether there is provision of the supply to the entity in Australia or outside Australia. Only where there is provision of a supply to an entity outside Australia does effective use or enjoyment take place outside Australia.

399. If a supply is provided to an entity that has a presence both in Australia and outside Australia, it is necessary to determine whether the supply is provided to the entity's presence in Australia, outside Australia or whether the supply is provided in part to each presence or, to both presences.

400. We consider that a supply is provided to a company, partnership, corporate limited partnership or trust in Australia if, and to the extent, the supply is for the purposes of its Australian presence[100]. To this extent effective use or enjoyment of that supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.

401. To the extent that the supply is for the purposes of the entity's presence outside Australia the supply is provided to that entity outside Australia. To this extent effective use or enjoyment of that supply takes place outside Australia. Paragraph (b) of item 3 is satisfied and the supply is GST-free under item 3 if the other requirements of item 3 are satisfied.

402. If the supply is provided for the purposes of both the presence of the entity in Australia and the presence of the entity outside Australia, (that is, separate parts of the supply are not identifiable as being provided for the purposes of each particular presence), we do not consider the supply is apportionable. As the supply (as a whole) is provided to an entity in Australia, effective use or enjoyment of the supply does not, in part, take place outside Australia and, therefore, paragraph (b) of item 3 is not satisfied to any extent. See Example 62, paragraphs 484 to 489, Part VI of the Explanation section.

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[99] Refer to GSTR 2004/7 – paragraphs 380 to 397.

[100] Examples of the Australian presence of an entity are the Australian branch of a non-resident company or, if it is an Australian incorporated company, the Australian head office.

Example 17 – supply of consultancy services made by a sole trader to a resident charitable organisation with a presence both in Australia and outside Australia

403. *Irene is a resident sole trader. Irene is contracted by a charitable organisation that is incorporated (and thus resident) in Australia. The charitable organisation has a presence both in Australia and outside Australia. Irene is to assist the overseas branch of the organisation with its financial management. Most of the consulting work is carried out by Irene overseas although some of the reports are written up in Australia.*

404. *Although the work is partly performed outside Australia it is nonetheless connected with Australia as it is made through an enterprise that Irene carries on in Australia (paragraph 9-25(5)(b)).*

Paragraph (a) of item 3

405. *The supply is made to the charitable organisation that is in Australia, but not in relation to the supply, when the services by Irene are performed. Therefore, the supply satisfies the requirements of paragraph (a) of item 3.*[101]

Paragraph (b) of item 3

406. *The supply is provided to the charitable organisation and the charitable organisation is the entity that uses or enjoys the supply. Therefore, it is necessary to determine where use or enjoyment of the supply by the charitable organisation takes place.*

407. *Irene's services are for the purposes of the charitable organisation's branch operations outside Australia. The supply of consulting services by Irene is therefore provided to the charitable organisation outside Australia and the effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is therefore satisfied and the supply is GST-free under item 3.*[102]

Example 18 – supply of consultancy services by a resident company to non-resident company; part of supply is made by another resident company

408. *B Co, a resident company, is contracted by a non-resident company NR Co to provide a composite report and recommendation on the viability of an offshore joint venture project, Project X. B Co is required to report on matters including the financial viability of the project, its longevity, the environmental impact and overall its likely*

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[101] See paragraphs 333 to 372 in GSTR 2004/7 which explain when a company is in Australia for the purposes of item 3. If a company is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied.

[102] The requirement in item 3 that the supply is not a supply of work physically performed on goods situated in Australia and is not a supply directly connected with real property situated in Australia is also satisfied.

success. If B Co's report to NR Co is suitably favourable, NR Co may invest in the project.

409. *B Co contracts Aus Co, another resident company, to undertake the environmental impact study. Aus Co does not provide any reports to NR Co. All reports are provided to B Co. The copyright or intellectual property in any reports or work produced by Aus Co belongs to B Co. The services by Aus Co are performed both in Australia and outside Australia. Aus Co is directly responsible to B Co for the performance of the work. B Co has no presence outside Australia.*

Paragraph (a) of item 3

410. *The supply of services by Aus Co is made to B Co a resident company that is in Australia in relation to the supply. Therefore, paragraph (a) of item 3 is not satisfied unless subsection 38-190(4) applies.*

Subsection 38-190(4)

411. *Paragraph 38-190(4)(a) is satisfied as the supply by Aus Co is made under an agreement with a resident company, B Co.*

412. *It is then necessary to determine if paragraph 38-190(4)(b) is satisfied. Paragraph 38-190(4)(b) is only satisfied if the supply by Aus Co is provided to another entity outside Australia.*

413. *The facts state that Aus Co is to review the environmental impact of Project X and is required to provide all reports to B Co and is responsible only to B Co for the performance of the work. Although the report is ultimately used by B Co in providing a composite report and recommendation to NR Co the supply by Aus Co is not provided to NR Co. The supply is not, therefore, provided to another entity. Subsection 38-190(4) does not apply and thus paragraph (a) of item 3 is not satisfied.*

Paragraph (b) of item 3

414. *While it is unnecessary to consider paragraph (b) of item 3, it is also not satisfied. The supply is provided by Aus Co to B Co and B Co is the entity that uses or enjoys the supply. Therefore, it is necessary to determine where use or enjoyment of the supply by B Co takes place.*

415. *As the supply of services by Aus Co is provided to B Co, which has no presence outside Australia, the supply is provided to B Co in Australia. As the supply is provided to B Co in Australia effective use or enjoyment of the supply does not take place outside Australia.*

416. *The supply is not GST-free under item 3.*

Example 19 – supply of services of taking messages, telephone calls, mail and faxes by a resident company for a non-resident company

417. *Aus Co is a resident of Australia. Aus Co has been contracted by NZ Co to take messages, handle telephone calls, mail and faxes on behalf of NZ Co. Aus Co in effect operates as the postal address and telephone contact for NZ Co in Australia. Aus Co does not otherwise conduct any business on behalf of NZ Co but merely forwards on messages, faxes and phone calls to NZ Co in New Zealand. NZ Co does not carry on business in Australia through Aus Co.*[103]

Paragraph (a) of item 3

418. *The supply of services by Aus Co is made to NZ Co, a non-resident entity that is not in Australia when the services are performed. The supply therefore satisfies paragraph (a) of item 3.*

Paragraph (b) of item 3

419. *The supply is provided to NZ Co and NZ Co is the entity that uses or enjoys the supply. Therefore, it is necessary to determine where use or enjoyment of the supply by NZ Co takes place.*

420. *As NZ Co does not have a presence in Australia the supply is provided to NZ Co for the purposes of its presence outside Australia. The supply is therefore provided to NZ Co outside Australia and thus effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is satisfied.*

421. *The supply is, therefore, GST-free under item 3 provided the other requirements of item 3 are satisfied.*[104]

A supply of certain delivery or freight services

422. In the case of delivery or freight services which are provided to a company, partnership, corporate limited partnership or trust in the circumstances described at paragraph 210, we accept those services are provided to that entity in Australia, if the goods are addressed to that entity in Australia. Alternatively, if the goods, are addressed to that entity outside Australia, we accept those services are provided to that entity outside Australia.

423. This approach recognises the inherent practical difficulties in otherwise determining whether the supply is provided to an entity in Australia or outside Australia and thus whether effective use or enjoyment of the supply takes place outside Australia, particularly if

[103] See paragraphs 250 to 332 of GSTR 2004/7 which explain when a company carries on business in Australia.
[104] That is, it is not a supply of work physically performed on goods in Australia or a supply directly connected with real property in Australia.

the freight or delivery services are the subject of subcontract arrangements.

424. This approach does not, however, apply to the delivery of goods that are generically addressed to 'The Householder' or are for delivery to the public at large. In that case we consider the supply is made and provided to the entity seeking to have the goods delivered – see Example 12, paragraphs 347 to 352. It also does not apply to circumstances where an entity's own goods are freighted or moved from one location to another location. The circumstances of the particular supply in question must be considered to determine the entity the supply is provided to and whether the supply is provided to that entity in Australia or outside Australia and thus whether effective use or enjoyment of the supply takes place outside Australia.

425. The following example illustrates the approach where goods from one entity are sent to another entity. This can be contrasted with Example 12, (paragraphs 347 to 352) where the delivery is to the public at large.

Example 20 – export by Australian subsidiary – domestic leg of transport – supplier required to deliver goods to a customer outside Australia – supply of transport services (freight services only) made to a resident and provided to an entity outside Australia

426. *A resident company, Aus Co, supplies goods to a non-resident company, UK Co. Under the export sale terms Aus Co is obliged to deliver the goods to UK Co. Aus Co engages a resident transport company, Aus Trans Co, to undertake the international movement of goods from Australia to the UK. The goods are to be delivered to UK Co in London.*

427. *Aus Trans Co subcontracts part of the supply to another Australian resident transport company Oz Carriers to transport the goods from Adelaide to Sydney. The supply by Oz Carriers is not covered by item 5 of section 38-355 as Oz Carriers is not the supplier of the international transport of the goods from Australia. The transport of the goods from Australia to London is carried out by Aus Trans Co.*

428. *Oz Carriers picks up the goods in Adelaide and delivers them to Sydney.*

429. *Oz Carriers arranges a suitable time with Aus Co to pick up the goods. The transport service occurs over the time from picking up the goods in Adelaide until delivery of the goods to Aus Trans Co in Sydney for Aus Trans Co to then transport the goods on to UK Co.*

Paragraph (a) of item 3

430. *Oz Carriers makes a supply of transport services to Aus Trans Co, an entity that is in Australia when the services are performed. The*

supply does not satisfy the requirements of paragraph (a) of item 3 unless subsection 38-190(4) applies.

Subsection 38-190(4)

431. *The supply of transport services by Oz Carriers is a supply under an agreement entered into with a resident, Aus Trans Co. Paragraph 38-190(4)(a) is therefore satisfied.*

432. *It is then necessary to determine if paragraph 38-190(4)(b) is satisfied.*

433. *Under the export sale terms, Aus Co is required to provide UK Co with the services of delivering the goods to UK Co in London. Aus Co effects provision of delivery services to UK Co through Aus Trans Co. Aus Trans Co in turn subcontracts part of the provision of delivery services to Oz Carriers.*

434. *On these facts the supply of domestic transport services by Oz Carriers to Aus Trans Co is provided to UK Co (the overseas customer) of Aus Co (the exporter). Delivery services are required to be provided to the UK customer and those services are provided to the customer under various subcontract arrangements.*

435. *However, we recognise that Oz Carriers may not be aware of all the circumstances of the supply of transport, as described above, that it makes to Aus Trans Co. At a practical level, the transport services are provided to the addressee, the UK customer, UK Co. Thus, where goods from one entity are addressed for delivery to another entity, we consider that it is reasonable for Oz Carriers to conclude that the transport services are provided to another entity, in this case UK Co.*

436. *UK Co is outside Australia when the transport services are performed. If the transport services are for the purposes of UK Co outside Australia the supply of transport services is provided to another entity, UK Co, outside Australia.*

437. *We recognise that Oz Carriers is unlikely to know whether the transport services are for the purposes of UK Co outside Australia. At a practical level, the goods are addressed to UK Co outside Australia and we therefore consider that it is reasonable for Oz Carriers to conclude that the transport services are provided to UK Co for its purposes outside Australia. Therefore, the supply is provided to another entity outside Australia. (Note: the outcome is the same even if UK Co has a presence in Australia.)*

438. *Subsection 38-190(4), therefore applies and the supply satisfies paragraph (a) of item 3.*

Paragraph (b) of item 3

439. *The supply is provided to UK Co and UK Co is the entity that uses or enjoys the supply. Therefore, it is necessary to determine where use or enjoyment of the supply by UK Co takes place.*

440. *To determine whether effective use or enjoyment of the supply takes place outside Australia it is necessary to consider if provision of the supply is to UK Co in Australia or outside Australia. The supply is provided to UK Co outside Australia if the delivery or freight services are for the purposes of UK Co's presence outside Australia.*

441. *We explain above for the purposes of paragraph 38-190(4)(b) that we consider the supply of delivery or freight services are for the purposes of UK Co's presence outside Australia as the goods are addressed to UK Co outside Australia. Paragraph (b) of item 3 is therefore satisfied and the supply is GST-free under item 3.*[105]

Later use of a supply by an entity

442. If the nature of a supply is such that the supply is provided to an entity outside Australia and thus effectively used or enjoyed outside Australia, the fact that the results or outcomes of the supply are later used in Australia does not alter the outcome that effective use or enjoyment of the supply takes place outside Australia.

443. Similarly, if a supply is provided to an entity in Australia, and that supply is later used outside Australia, that later use does not alter the fact that the supply is provided to that entity in Australia and thus effective use or enjoyment of the supply does not take place outside Australia.

444. Also refer to paragraphs 377 to 380, Part III of the Explanation section.

Another entity benefits from the supply

445. If the nature of the supply is such that the supply is provided to an entity outside Australia and thus effective use or enjoyment of the supply takes place outside Australia, this outcome is not altered even if another entity in Australia benefits from the supply.

446. Similarly, if a supply is provided to an entity in Australia, and another entity outside Australia benefits from that supply this does not alter the outcome that the supply is provided to the entity in Australia and thus effective use or enjoyment of the supply does not take place outside Australia.

447. Also refer to paragraphs 381 to 384, Part III of the Explanation section.

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[105] The requirement in item 3 that the supply is not a supply of work physically performed on goods situated in Australia and is not a supply directly connected with real property situated in Australia is also satisfied.

Further examples

448. In Part V of the Explanation section, we provide further examples of supplies provided to entities other than individuals and where effective use or enjoyment of that supply takes place. The examples draw on examples from GSTR 2005/6[106] and give the GST outcome under item 3 (and item 2 for comparative purposes). See Table 2, pages 94 to 105. See also Example 1 (paragraphs 216 to 229), Example 2 (paragraphs 231 to 233) and Example 3 (paragraphs 234 to 244) in Part I of the Explanation section.

[106] Goods and Services Tax Ruling: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the *A New Tax system (Goods and Services Tax) Act 1999.*

Part V – Further examples

449. In this section of the Ruling we provide two tables which summarise relevant examples from GSTR 2005/6.[107] In each table we identify the entity that uses or enjoys the supply (that is the entity to which the supply is provided) and where effective use or enjoyment of the supply by that entity takes place (see Columns 4 and 5 respectively). We also set out whether the supply is GST-free under item 3 (and item 2 for comparative purposes) (see Columns 6 and 3 respectively).

450. Table 1 (pages 87 to 93) contains a summary of examples from GSTR 2005/6 where the supply is provided to an individual. For further details of the supply refer to the specific example in GSTR 2005/6.

451. Table 2 (pages 94 to 105) contains a summary of examples from GSTR 2005/6 where the supply is provided to an entity other than an individual. For further details of the supply refer to the specific example in GSTR 2005/6.

[107] Goods and Services Tax Ruling: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the *A New Tax system (Goods and Services Tax) Act 1999.*

Table 1 – The supply is provided to an individual and therefore that individual is the entity that uses or enjoys the supply

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
21	**Supply of legal services** *(Per Example 6, paragraphs 350 to 356, GSTR 2005/6)* • David, an Australian resident individual, is arrested and charged with an offence while in New Zealand on holiday. A non-resident contracts with an Australian law firm for the supply of legal services. The legal services are provided to David over a period of four weeks during which time he is in New Zealand. • The need for the supply of legal services arises from David's presence outside Australia; his presence outside Australia is not merely coincidental with the provision of the supply. The supply of legal services is therefore provided to David outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**David** as David is the entity to whom the supply is provided	**takes place outside Australia** as the supply is provided to David outside Australia	**Yes**
22	**Supply of legal services - barrister engaged by solicitor** *(Per Examples 19 & 20, paragraphs 472 to 476 and 477 to 481 respectively, GSTR 2005/6)* • An Australian solicitor, as agent for a non-resident individual, engages an Australian barrister to supply legal services to a non-resident individual on an immigration matter. The individual is not in Australia when the legal services by the barrister or solicitor are performed and the supply is not directly connected with real property situated in Australia. • The supply of legal services by the barrister to the non-resident individual is both made and provided to the non-resident, through the solicitor as agent for the non-resident. As the non-resident individual is not in Australia when the services are performed, the supply of legal services by the barrister is provided to the individual outside Australia. • The supply of legal services by the solicitor is also made and provided to the non-resident individual outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**non-resident individual** as this is the entity to whom the supply by the barrister, and the supply by the solicitor, is provided.	**takes place outside Australia** as the supply by the barrister, and the supply by the solicitor, is provided to the individual outside Australia	**Yes**

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
23	**Supply of entertainment** *(Per Example 7, paragraphs 358 to 363, GSTR 2005/6)* • A UK non-resident employer purchases a ticket from a supplier in Australia for his employee in Australia to attend an Aussie rules football match in Melbourne. • The employee is the entity that attends the football match and who is entertained. The supply although made to the employer is provided to the employee. • As the employee's presence in Australia is integral to the performance of the supply of entertainment services, the supply is provided to the individual in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**the employee** as the employee is the entity to which the supply is provided	**does not take place outside Australia** as the supply is provided to the employee in Australia	**No**
24	**Supply of storage services** *(Per Example 8, paragraphs 365 to 370, GSTR 2005/6)* • John, who is a non-resident, has personal goods stored in Brisbane at a lock-up storage facility. The agreement for the storage is between John's employer, a non-resident company, and an Australian storage provider. John comes to Australia on holidays and calls in to check the condition and safety of the goods he has stored at the facility. • What is being supplied is storage of personal goods of an employee. John's goods are stored for him. The nature of the service is such that the supply of storage services is provided to John, another entity. Thus the supply is made to John's employer but is provided to John. • As John is merely taking advantage of being in Australia to check on the condition and safety of the goods he has stored at the facility John's presence is not integral to the provision of the supply; it is merely coincidental. • The supply of storage services is therefore not provided to John in Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**John** as John is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to John outside Australia	**Yes**

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
25	**Supply of investigation services** *(Per Example 9, paragraphs 371 to 376, GSTR 2005/6)* • Peter's relative, a non- resident individual, who is not in Australia when the thing supplied is done, engages an Australian private investigator to provide services to Peter in Australia. Peter, a resident individual, is trying to find a relative who may be either in Australia or outside Australia. Peter is on holidays outside Australia during part of the time when those services are performed. The private investigator provides weekly e-mail updates to Peter on the progress he is making in finding the missing relative. • The investigation services are required to be provided to Peter. The supply although made to a non-resident is provided to another entity, Peter. • The weekly e-mails to Peter while he is overseas are merely necessitated by his absence from Australia on holiday. His presence outside Australia is merely coincidental with the provision of the supply. Peter is only being updated on the progress of the supply. Peter's presence outside Australia is not integral to the provision of the supply. • The supply is therefore provided to Peter in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**Peter** as Peter is the entity to which the supply is provided	**does not take place outside Australia** as the supply is provided to Peter in Australia	**No**
26	**Supply of training** *(Per Example 15, paragraphs 442 to 448, GSTR 2005/6)* • An Australian flight school contracts with a non-resident airline company (that has no presence in Australia) to provide training in Australia to employees of the non-resident company. The employees, who are non-resident individuals from China, attend the training in Australia. • What is being supplied is the teaching and tutoring of the employees of the non-resident airline company. It is in the nature of such training services that it is the individuals that are trained, rather than the individuals' employer, and it is therefore the individual who is provided with the training. These services are of a kind that can only be provided to the employee. The supply is therefore made to the non-resident employer but is provided to its employees. • The employee pilots are required to physically attend training in Australia. As the employee's presence in Australia is integral to the performance of the training, the supply is provided to the employees in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**each employee** as the employee is the entity to which the supply is provided	**does not take place outside Australia** as the supply is provided to the employee in Australia	**No**

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
27	**Supply of training** *(Per Example 16, paragraphs 451 to 456, GSTR 2005/6)* • Andrew is a New Zealand resident individual who carries on business as a management consultant. Andrew employs Barbara, who is based in Sydney, to provide consultancy services to Andrew's Australian customers. Andrew decides that Barbara would benefit from some additional computer training and so engages an Australian computer training company to train Barbara. Andrew remains in New Zealand at all times and Barbara remains in Australia at all times. • The supply is made by the Australian computer training company to Andrew but the training services are provided to Barbara as she is the person that is trained (by analogy with example 26). As Barbara's presence in Australia is integral to the performance of the training, the supply is provided to Barbara in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**Barbara** as Barbara is the entity to which the supply is provided	**does not take place outside Australia** as the supply is provided to Barbara in Australia	**No**
28	**Supply of training** *(Per Example 21, paragraphs 484 to 489, GSTR 2005/6)* • A partner in a non-resident partnership contracts, on behalf of the partnership, for the supply of 'Managing for today and tomorrow' training to all newly appointed partners. The training course is conducted in Australia. • The training services are provided to each partner as the partners are the persons that are trained (by analogy with example 26). As the partners are required to physically attend training in Australia and their presence in Australia is integral to the performance of the supply, the supply is provided to each partner in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**each partner** as the partner is the entity to which the supply is provided	**does not take place outside Australia** as the supply is provided to the partner in Australia	**No**

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
29	**Supply of accountancy services (tax return preparation)** *(Per Example 17, paragraphs 458 to 464, GSTR 2005/6)* • A non-resident company contracts an Australian resident accounting firm to complete foreign tax returns for the company's employees working in Australia on secondment with a company client. • While the employees (who are non-residents for Australian income tax purposes) are in Australia, they meet with the Australian resident accounting firm during the course of their tax returns being prepared. The employees are available to answer questions and to provide any further information. The returns are completed and signed by each employee while the employee is in Australia. • What is being supplied is the service of preparing the foreign tax returns of the employees. The nature of the service is such that the supply of tax return preparation services is provided to each employee, who is another entity. • Each employee is in Australia when the tax return services are performed. On the facts their presence in Australia is integral to the provision of the supply. It is not merely coincidental to the provision of the supply. The supply is therefore provided to each employee in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**each employee** as the employee is the entity to whom the supply is provided	**does not take place outside Australia** as the supply is provided to the employee in Australia	**No**
30	**Supply of speaking services** *(Per Example 25, paragraphs 523 to 528, GSTR 2005/6)* • An Australian legal specialist (sole proprietor) is engaged for a fee by a non-resident company to speak about recent maritime law developments at an international conference held in Sydney. The attendees of the conference are members of the legal profession, both from Australia and overseas. • The supply by the lawyer is made to the non-resident company but is provided to the attendees at the conference as what is supplied is information and knowledge for the professional development of the members of the audience. It is akin to training of the attendees. • Each attendee's presence in Australia is integral to the performance of the supply. The supply is therefore provided to each attendee in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**each attendee** as this is the entity to which the supply is provided	**does not take place outside Australia** as the supply is provided to the attendee in Australia	**No**

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
31	**Supply of transport services (freight services only)** *(Per Example 10, paragraphs 380 to 391, GSTR 2005/6)* • An Australian exporter of goods, which are to be delivered duty paid to a Japanese customer (individual), contracts with Tokyo Air Freight to deliver those goods to the customer in Tokyo. Tokyo Air Freight in turn contracts with Aus Transport to transport the goods on the domestic leg from Adelaide to Sydney. • The supply of delivery services by Aus Transport is made to Tokyo Air Freight but is provided to the Japanese customer. At a practical level, the goods are addressed to the Japanese customer outside Australia and we therefore consider that it is reasonable for Aus Transport to conclude that the transport services are provided to the Japanese customer outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**Japanese customer** as the Japanese customer is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to the Japanese customer outside Australia	**Yes**
32	**Supply of delivery services** *(Per Example 11, paragraphs 392 to 400, GSTR 2005/6)* • Kate who is in Australia purchases a book over the Internet from Booklovers Inc. Booklovers Inc offers a delivery service for a small extra charge of which Kate avails herself. Booklovers Inc engages Ace Couriers to deliver the book to Kate. Booklovers Inc is a non-resident company which does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • The supply of delivery services by Ace Couriers is made to Booklovers Inc but is provided to Kate as the book is for delivery from one entity to another entity. At a practical level, the goods are addressed to Kate in Australia and we therefore consider that it is reasonable for Ace Couriers to conclude that the transport services are provided to Kate in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**Kate** as Kate is the entity to which the supply is provided	**does not take place outside Australia** as the supply is provided to Kate in Australia	**No**

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
33	**Supply of assembly services** *(Per Example 37, paragraphs 614 to 620, GSTR 2005/6)* • UK Co sells furniture in kit form but offers an assembly service to the customer (individual) in Australia if the customer requires the furniture to be assembled prior to delivery. UK Co engages Aus Engineering to assemble the furniture so that it is ready to be delivered, as assembled, to the Australian customer of UK Co. UK Co does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • The supply by Aus Engineering is made to UK Co but is provided to the customer in Australia. The furniture is assembled for a specified customer. • If the customer is a resident individual the supply is provided to that individual in Australia. If the customer is a non-resident individual the need for the supply arises from the presence of that individual in Australia. The supply of assembly services is, therefore, provided to another entity, the Australian customer, in Australia, irrespective of whether that customer is a non-resident or resident individual	**No** as ss38-190(3) negates the GST-free status under item 2	**each customer** as the customer is the entity to which the supply is provided	**does not take place outside Australia** as the supply is provided to the customer in Australia	**No**
34	**Repair services to a rental property** *(Per Example 24, paragraphs 510 to 517, GSTR 2005/6)* • Angela is a non-resident individual who owns a residential apartment in Australia which is currently being rented. Angela's real estate agent advises her that the air-conditioner needs repairing. Angela authorises the repairs which the agent arranges. Angela is not physically located in Australia at any time during which the repair services are performed. Angela is not registered, or required to be registered for GST. • The supply of the repair services are made and provided to Angela, a non-resident who is not in Australia when the repair services are performed. As landlord it is Angela's responsibility to maintain the apartment and all inclusions in good repair. While the tenant may subsequently benefit from the supply of the repair services, this does not alter the nature of the supply and the fact that the supply is not provided to the tenant. (The supply is also not provided to the agent who merely arranges for the supply to be made to Angela.) • **However note that: subsection 38-190(2A) may apply to this supply.** As the supply by Angela is of the residential rental property which is an input taxed supply, and the acquisition of the repair services relates to the making of that supply, the GST-free status of the supply is negated by subsection 38-190(2A) if the supply of the repair services was made on or after 1 April 2005. If the supply of the repair services was made before 1 April 2005 subsection 38-190(2A) does not negate the GST free status of the supply.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2. (While the supply is either a supply of work physically performed on goods situated in Australia or a supply directly connected with real property, the requirements of paragraph (b) of item 2 are satisfied).	**Angela** as Angela is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to Angela outside Australia	**No** (As the supply is either a supply of work physically performed on goods situated in Australia or a supply directly connected with real property, the require-ments of item 3 are not satisfied)

Table 2 – The supply is provided to a company, partnership, corporate limited partnership or trust and therefore that entity is the entity that uses or enjoys the supply

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
35	**Supply of technical support services** *(Per Example 1, paragraphs 264 to 275, GSTR 2005/6)* • Aus Co is a subsidiary of US Co. Aus Co is contracted by US Co to provide technical support services, in relation to software licensed by US Co, to financial services entities in Australia. The actual flow of the technical support services is to the Australian financial services entities. Therefore the supply by Aus Co is made to US Co but is provided to the financial services entities. • The Australian financial services entities are in Australia when the service is performed. The supply of technical support services is for the purposes of the financial services entities in Australia. The supply is therefore provided to the financial services entities in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**financial service entities** as this is the entity to which the supply is provided	**does not take place outside Australia** as the supply is provided to the financial services entities in Australia	**No**
36	**Supply of audit services** *(Per Example 2, paragraphs 288 to 296, GSTR 2005/6)* • A non resident US parent company contracts with an Australian accounting firm to audit its subsidiary in Australia. The non-resident US parent company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • What is being supplied is an audit service effecting compliance by the Australian subsidiary with its obligations under the corporation's laws in Australia. The actual flow of the audit service is to another entity, the Australian subsidiary. • The Australian subsidiary is in Australia when the audit service is performed. As the supply of audit services is for the purposes of the Australian subsidiary, the supply is provided to that entity in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**Australian subsidiary** as this is the entity to which the supply is provided	**does not take place outside Australia** as the supply is provided to the Australian subsidiary in Australia	**No**

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
37	**Supply of audit services** *(Per Example 3, paragraphs 298 to 303, GSTR 2005/6)* • A non-resident US parent company contracts with an Australian accounting firm to audit its subsidiary in Australia. The non-resident US parent company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • What is being supplied is an audit service effecting compliance by the non-resident US parent company with its reporting obligations in the US. The actual flow of the audit service is to the US parent company, not the Australian subsidiary which is the subject of the audit. The supply is therefore provided to the US parent company. • The supply of audit services is provided to the US parent company, which has no presence in Australia. The supply is therefore provided to that entity outside Australia	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**US parent company** as this is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to the US parent company outside Australia	**Yes**
38	**Supply of legal services** *(Per Example 22, paragraphs 492 to 498, GSTR 2005/6)* • A non-resident partnership is contemplating the acquisition of commercial real property in Australia. The partnership does not carry on any business activities in Australia and so one of the partners comes to Australia to engage and consult with the Australian law firm about the proposed acquisition and is in Australia when the supply of legal services is performed. As the advice concerns the business affairs of the partnership the supply is provided to the partnership (not the partner). • As the supply is provided to the partnership which does not have a presence in Australia, the supply is provided to the partnership outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**non-resident partner-ship** as this is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to the non-resident partnership outside Australia	**Yes**

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
39	**Supply of legal services** *(Per Example 4, paragraphs 305 to 312, GSTR 2005/6)* • An Australian law firm is requested by a non-resident UK company to apply, on behalf of the UK company, for registration of a trademark in an international class in the name of its Australian subsidiary. The UK company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • What is being supplied by the Australian law firm is a legal service of preparing and lodging an application for registration of the trademark on behalf of the applicant, UK Co. That legal service – that is, preparation and lodgement of an application on behalf of the non resident, is to be distinguished from the outcome of that service, the registration of the trademark in the name of the Australian subsidiary. • While the outcome of the service is that the Australian subsidiary obtains the exclusive rights to use the trademark, the nature of the supply of the legal services in applying for the trademark, is such that the legal services are provided to the applicant, the UK company, which has no presence in Australia. The supply is therefore provided to the UK company outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**UK company** as this is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to the UK company outside Australia	**Yes**
40	**Supply of legal services (advice)** *(Per Example 5, paragraphs 314 to 322, GSTR 2005/6)* • US Co is a non-resident company, which has an Australian subsidiary. US Co enters into a contract with an Australian law firm for the supply of legal services. US Co does not carry on business in Australia either through a place of business of its own, through its Australian subsidiary, or through any other agent acting on behalf of the company. • The legal service is advice to the Australian subsidiary on the legal consequences and its options for dismissing its Chief Finance Officer. The law firm has no further contact with US Co beyond entering into the contract and rendering the bill for professional services to US Co. • The supply by the Australian law firm is made to US Co but is provided to its Australian subsidiary. The Australian subsidiary is in Australia when the services are performed and the supply is for the purposes of that subsidiary in Australia. The supply is, therefore, provided to the Australian subsidiary in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**Australian subsidiary** as this is the entity to which the supply is provided	**does not take place outside Australia** as the supply is provided to the Australian subsidiary in Australia	**No**

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
41	**Supply of legal services (advice)** *(Per Example 27, paragraphs 539 to 543, GSTR 2005/6)* • An executive of a non-resident company, US Finance, comes to Australia to obtain legal advice from an Australian law firm. US Finance does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • The advice concerns foreign ownership requirements which may impact on the possible purchase of shares in an Australian company by US Finance. The interaction between the Australian law firm and the employee of US Co does not alter the nature of the advice and the fact that the supply is provided to US Finance Co. The supply by the Australian law firm is made and provided to US Finance, which has no presence in Australia. The supply is therefore provided to US Finance outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**US Finance** as this is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to US Finance outside Australia	**Yes**
42	**Supply of legal services (advice)** *(Per Example 28, paragraphs 544 to 549, GSTR 2005/6)* • NR Co, proposes to use its existing Australian subsidiary, Aus Sub, to acquire the shares in an Australian company, Oz Co. An Australian law firm supplies taxation advice to the head office of NR Co on various tax issues associated with NR Co acquiring Oz Co through an existing Australian subsidiary. NR Co does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • What is being supplied is advice on tax issues relevant to NR Co's proposal to acquire Oz Co through Aus Sub. The legal firm has no interaction with Aus Sub, nor is any advice given to Aus Sub. The nature of the advice is such that the supply of legal advice is made and provided to NR Co. The supply by the Australian law firm is made and provided to NR Co, which has no presence in Australia. The supply is therefore provided to NR Co outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**NR Co** as this is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to NR Co outside Australia	**Yes**

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
43	**Supply of legal services (advice)** *(Per Example 29, paragraphs 550 to 554, GSTR 2005/6)* • An Australian law firm contracts with a non-resident company, US Co, to supply legal services. US Co does not carry on business in Australia either through a place of business of its own or through its subsidiary, or any other agent acting on its behalf. • The legal advice concerns the dismissal of the Chief Executive Officer ('CEO') of the Australian subsidiary of US Co. US Co is assessing the impact dismissal would have on its Australian operations. The Australian law firm deals only with personnel of US Co and has no interaction of any kind with any personnel from the Australian subsidiary in relation to the advice. The advice is prepared and once finalised sent to US Co. • The supply by the Australian law firm is made and provided to US Co, which has no presence in Australia. The supply is therefore provided to US Co outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**US Co** as this is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to US Co outside Australia	**Yes**
44	**Supply of accounting services** *(Per Example 30, paragraphs 557 to 564, GSTR 2005/6)* • A non-resident company, NR Co, contracts with an Australian accounting firm to co-ordinate management reporting systems for the Australian subsidiaries of its global enterprise. NR Co does not carry on business in Australia either through a place of business of its own, through its Australian subsidiaries, or any other agent acting on its behalf. • Management consultants from the Australian accounting firm are required to work with the Australian subsidiaries to modify their systems so that each subsidiary can meet the group's global reporting standards. • The supply by the Australian accounting firm is made to NR Co but is provided to its Australian subsidiary. The Australian subsidiary is in Australia when the services are performed and the supply is for the purposes of the Australian subsidiary in Australia. The supply is, therefore, provided to the Australian subsidiary in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**Australian subsidiary** as this is the entity to which the supply is provided	**does not take place outside Australia** as the supply is provided to the Australian subsidiary in Australia	**No**

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
45	**Supply of accounting services (tax advice)** *(Per Example 31, paragraphs 565 to 570, GSTR 2005/6)* • A non-resident company, NZ Co, has a subsidiary in Australia. NZ Co does not carry on business in Australia either through a place of business of its own, through its Australian subsidiary, or any other agent acting on its behalf. • NZ Co is contemplating selling the subsidiary in Australia or down-sizing the Australian operations by selling-off key assets owned by the subsidiary. An Australian accounting firm supplies NZ Co with advice on the Australian taxation implications of the different options to assist NZ Co in its deliberations. The tax advice concerns the plans of NZ Co to either sell-off its Australian subsidiary or assets of the subsidiary. The Australian accounting firm deals only with personnel of NZ Co. It has no interaction of any kind with any personnel from the Australian subsidiary in relation to the advice. The advice is prepared and once finalised sent to NZ Co • The supply by the Australian accounting firm is made and provided to NZ Co, which has no presence in Australia. The supply is therefore provided to NZ Co outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**NZ Co** as this is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to NZ Co outside Australia	**Yes**
46	**Supply of customs advice** *(Per Example 12, paragraphs 408 to 414, GSTR 2005/6)* • A non-resident parent company contracts with a customs specialist for the provision of customs advice in relation to operations in the Asia-Pacific region. The non-resident company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • The non-resident company has an Australian subsidiary with a branch in Malaysia. The branch operates an import/export business in Kuala Lumpur. The customs specialist provides advice to the Malaysian branch on aspects of new import restrictions recently introduced in Malaysia. • The advice is about import restrictions impacting on the Malaysian operations of the Australian subsidiary. The supply is provided to another entity, the Australian subsidiary. While the Australian subsidiary is in Australia when the services are performed, the advice is for the purposes of its Malaysian branch. The supply is therefore provided to the Australian subsidiary outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**Australian subsidiary** as this is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to the Australian subsidiary outside Australia	**Yes**

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
47	**Supply of speaking services** *(Per Example 26, paragraphs 529 to 536, GSTR 2005/6)* • An Australian software expert is engaged by a non-resident company to promote and market its new software product at various seminars throughout Australia. The seminars are pitched to existing and potential customers. The non-resident software company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • The nature of the service is not the professional development of members of the audience. Rather, it is promoting and marketing a new product, that is, the new software of the non-resident software company to potential customers. While knowledge and information about the software capabilities flow to the audience members, this is only a by-product of the supply of speaking services and does not alter the true nature of the service, that is, the promotion and marketing of the new software. • The supply by the software expert is made and provided to the non-resident company, which has no presence in Australia. The supply is therefore provided to the non-resident company outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**non-resident company** as this is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to the non-resident company outside Australia	**Yes**
48	**Supply of advertising services** *(Per Example 23, paragraphs 504 to 508, GSTR 2005/6)* • A non-resident US company, which is a distributor of soft drinks, contracts for the supply of advertising air time on a national television network in Australia. The soft drinks are available from supermarket chains throughout Australia. The non-resident US company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • What is being supplied is air time on an Australian television network advertising the US distributor's products in Australia. The nature of the supply of air time is such that the supply is provided to the US company. While Australian retailers potentially benefit from the supply of advertising air time through increased sales, this does not alter the nature of the supply and the fact that the supply, as properly described, is not provided to another entity. • The supply of air time is made and provided to the US company, which has no presence in Australia. The supply is therefore provided to the non-resident US company outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**non-resident US company** as this is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to the non-resident US company outside Australia	**Yes**

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
49	**Supply of advertising services** *(Per Example 32, paragraphs 573 to 578, GSTR 2005/6)* • An Australian advertising agency, Aus Ad Co, contracts with Nile Co to develop and prepare advertising material for products sold by the world-wide group of Nile Co, including products sold by its Australian subsidiary, Aust Co. Nile Co does not carry on business in Australia either through a place of business of its own or its subsidiary or any other agent acting on behalf of the company. • Aus Ad Co deals only with Nile Co, which exercises full control over the conduct of the advertising services. Aus Ad Co delivers the advertising 'copy' (that is, the product) directly to the media in Australia. • The supply by the Australian advertising agency is made and provided to Nile Co, which has no presence in Australia. The supply is therefore provided to the non-resident US company outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**Nile Co** as this is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to Nile Co outside Australia	**Yes**
50	**Supply of advertising services** *(Per Example 33, paragraphs 580 to 587, GSTR 2005/6)* • An Australian advertising agency, Aus Ad Co, contracts with Sing Co to develop and prepare advertising material for products sold by its Australian subsidiary, Aust Co. Sing Co does not carry on business in Australia either through a place of business of its own, through Aust Co, or any other agent acting on behalf of the company. • Aus Ad Co deals only with the Australian subsidiary, which exercises full control over the conduct of the advertising services. Sing Co has no further participation in the supply beyond contracting and paying for the supply. • The supply by the Australian advertising agency is made to Sing Co but is provided to the Australian subsidiary. Aust Co is in Australia when the services are performed. As the services are for the purposes of Aust Co in Australia, the supply of advertising services is provided to another entity, Aust Co, in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**Australian subsidiary** as this is the entity to which the supply is provided	**does not take place outside Australia** as the supply is provided to Australian subsidiary in Australia	**No**

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
51	**Supply of telephone booking services** *(Per Example 34, paragraphs 589 to 594, GSTR 2005/6)* • Aus Bookings Co is contracted by Trans-Europe Railways Co (a non-resident company) to operate a telephone bookings centre in Australia. Trans-Europe does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • The telephone service is operated for Trans Europe so that it can take bookings from customers in Australia. The customers get information and other benefits, such as their travel booked, by calling Aus Bookings Co. However, the customers are not provided with the service of operating a bookings and enquiries service. This service is provided to Trans Europe. • The supply by Aus Bookings Co is made and provided to Trans-Europe, which has no presence in Australia. The supply is therefore provided to Trans-Europe outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**Trans-Europe** as this is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to Trans-Europe outside Australia	**Yes**
52	**Supply of computer helpline services** *(Per Example 35, paragraphs 596 to 602, GSTR 2005/6)* • Mumbai Technology, a non-resident company, contracts with Help Line Co to supply technical support services to an Australian company (Aus Customer), which has purchased a computer network from Mumbai Technology. Mumbai Technology does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • Help Line Co provides assistance, either over the phone or via e-mail, to staff of Aus Customer when they have technical problems. • While the staff of Aus Customer receive individual attention and advice, the nature of the supply is maintaining in working order, the computer system of Aus Customer. The supply by Help Line Co is made to Mumbai Technology but is provided to Aus Customer. Aus Customer Ltd is in Australia when the services are performed and the supply is for the purposes of Aus Customer in Australia. The supply is provided to another entity, Aus Customer, in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**Aus Customer** as this is the entity to which the supply is provided	**does not take place outside Australia** as the supply is provided to Aus Customer in Australia	**No**

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
53	**Supply of stevedoring services** *(Per Example 18, paragraphs 466 to 470, GSTR 2005/6)* • A non-resident shipping company contracts an Australian stevedore company to load and unload its ships when in Australian ports. Some of the employees of the shipping company are present to facilitate the process of loading/unloading the ship. The non-resident shipping company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • It is the ships of the non-resident shipping company that are loaded or unloaded. The supply by the Australian stevedore company is made and provided to the non-resident shipping company which has no presence in Australia. The supply is therefore provided to the non-resident shipping company outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**non-resident shipping company** as this is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to the non-resident shipping company outside Australia	**Yes**
54	**Supply of testing services** *(Per Example 36, paragraphs 604 to 611, GSTR 2005/6)* • UK Co contracts with an Australian resident, Oz Miner, to test, analyse and report on the quality of certain mineral ores found by Oz Miner during its recent exploration activities in Queensland. UK Co does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. UK Co is not registered or required to be registered for GST. • UK Co enters into an agreement with an Australian company, Oz Test Co, to perform certain tests on the ore samples and report on the findings of those tests directly to UK Co. UK Co uses this information to conduct further analysis culminating in a comprehensive report to send to Oz Miner on the quality of the ores. • UK Co arranges for Oz Miner to deliver its ore samples to Oz Test Co. Other than delivery of the samples to Oz Test Co, Oz Test Co has no further interaction with Oz Miner • The supply by Oz Test Co is made and provided to UK Co, which has no presence in Australia. The supply is therefore provided to UK Co outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**UK Co** as this is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to UK Co outside Australia	**Yes**

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
55	**Supply of assembly services** *(Per Example 38, paragraphs 621 to 625, GSTR 2005/6)* • UK Co sells furniture as an assembled unit to customers in Australia. However, to lower costs it has the furniture assembled by Aus Engineering once it arrives in Australia. UK Co does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • The assembly is undertaken on behalf of UK Co as the goods are sold as assembled goods to the customers in Australia. • The supply by Aus Engineering is made and provided to UK Co, which has no presence in Australia. The supply is therefore provided to UK Co outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**UK Co** as this is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to UK Co outside Australia	**Yes**
56	**Supply of assembly services** *(Per Example 39, paragraphs 626 to 630, GSTR 2005/6)* • UK Co imports furniture into Australia in kit form and has Aus Engineering assemble the furniture for sale to future, but as yet, unidentified customers. UK Co does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • The assembly is undertaken on behalf of UK Co. The assembly is undertaken prior to there being any customer for the assembled furniture. • The supply by Aus Engineering is made and provided to UK Co, which has no presence in Australia. The supply is therefore provided to UK Co outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**UK Co** as this is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to UK Co outside Australia	**Yes**
57	**Supply of transport services (freight services only)** *(Per Example 13, paragraphs 419 to 430, GSTR 2005/6)* • A non resident company, UK Co supplies goods on a delivered duty paid basis to an Australian customer, Oz Co. UK Co contracts with UK Trans Co to deliver those goods to Oz Co in Australia. Neither UK Co, nor UK Trans Co, carries on business in Australia through a place of business of its own or through an agent acting on its behalf. • UK Trans Co engages Aus Transport to transport the goods on the domestic leg from Sydney to Adelaide. • The supply by Aus Transport is made to UK Trans Co but is provided to Oz Co. At a practical level, the goods are addressed to Oz Co in Australia and we therefore consider that it is reasonable for Aus Transport to conclude that the transport services are provided to Oz Co for its purposes in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**Oz Co** as this is the entity to which the supply is provided	**does not take place outside Australia** as the supply is provided to Oz Co in Australia	**No**

E.g. #	The character and nature of the supply	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
58	**Supply of delivery services** *(Per Example 14, paragraphs 431 to 435, GSTR 2005/6)* • Booklovers Inc is a non-resident company which does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. Booklovers Inc contracts with Ace Couriers for the delivery of advertising material to the public at large in Sydney and Melbourne. • The delivery services are not required to be provided to any entity other than Booklovers Inc. The unsolicited delivery of goods to the public at large is not the provision of delivery services to another entity. • The supply by Ace Couriers is made and provided to Booklovers Inc, which has no presence in Australia. The supply is therefore provided to Booklovers Inc outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**Booklovers Inc** as this is the entity to which the supply is provided	**takes place outside Australia** as the supply is provided to Booklovers Inc outside Australia	**Yes**

Part VI – apportionment

452. In this Part we explain the requirement for apportionment of a supply if effective use or enjoyment of a supply takes place partly in Australia and partly outside Australia. We provide examples illustrating how apportionment arises. We also discuss how to apportion when a supply is provided, or required to be provided, on a periodic or progressive basis.

When apportionment is necessary

453. Section 9-5 provides that a supply is not a taxable supply to the extent that it is GST-free or input taxed. This creates a general apportionment rule for the GST Act.[108]

454. Apportionment may arise for the purposes of paragraph (b) of item 3 if, for example:

- a supply is provided in part to one entity in Australia and in part to another entity outside Australia. See Example 59 (paragraphs 456 to 465);
- a supply is partly provided to an entity in Australia and partly provided to that same entity outside Australia. See Example 60 (paragraphs 466 to 471); or
- a supply is made to one entity and is provided to another entity in Australia for part of the time. See Example 61 (paragraphs 473 to 481).

455. In each of these situations, effective use or enjoyment of the supply takes place outside Australia to the extent the supply is provided to the entity outside Australia. Effective use or enjoyment of the supply does not take place outside Australia, and the supply is not GST-free under item 3, to the extent the supply is provided to the entity in Australia.

Example 59 – supply made to a non-resident parent company and provided in part to a non-resident subsidiary and in part to an Australian subsidiary

456. *NZ Co is a non-resident parent company which has a subsidiary company in Australia and a subsidiary company in New Zealand. NZ Co does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. The New Zealand and Australian subsidiary entities have no presence outside of New Zealand and Australia respectively.*

457. *The non-resident parent company engages an Australian management consultant company, AMC Pty Ltd, to assist each subsidiary company in restructuring its operations. The restructuring*

[108] See GSTR 2001/8 Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts

operations are required to be effected by each subsidiary to achieve cost savings and efficiency gains.

Paragraph (a) of item 3

458. *The supply of management consultancy services by AMC is made to NZ Co, a non-resident company that is not in Australia when the consultancy services are performed. The supply satisfies the requirements of paragraph (a) of item 3.*

Paragraph (b) of item 3

459. *The consultancy work is undertaken by the consultant with each of the subsidiaries. The management consultant consults with each subsidiary in turn to restructure its operations to effect cost savings and efficiency gains.*

460. *The nature of the service is such that the supply is provided to each subsidiary. The actual flow of the services is to each subsidiary. The supply is, therefore, provided to each subsidiary (not the non-resident parent company) and it is therefore each subsidiary that uses or enjoys the supply. Therefore, it is necessary to determine where use or enjoyment of the supply by each subsidiary takes place.*

461. *The New Zealand subsidiary is not in Australia and therefore the services are not provided to that subsidiary in Australia. Effective use or enjoyment of the supply therefore takes place outside Australia to the extent the supply is provided to the New Zealand subsidiary.*

462. *The Australian subsidiary is in Australia when the services are performed. The services are provided to that subsidiary in Australia. Effective use or enjoyment of the supply therefore takes place in Australia to the extent the supply is provided to the Australian subsidiary.*

463. *Therefore the supply is GST-free under item 3 to the extent that the supply is provided to the New Zealand subsidiary. It is not GST-free under item 3 to the extent that the supply is provided to the Australian subsidiary.*

464. *The consideration for the supply is required to be apportioned between the GST-free part of the supply (that part of the supply which is provided to the New Zealand subsidiary), and the taxable*[109] *part of the supply (that part of the supply which is provided to the Australian subsidiary).*

465. *This is the same result that occurs for the supply under item 2 and subsection 38-190(3). Refer to Example 40, paragraphs 636 to 644 in GSTR 2005/6.*[110]

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[109] Assuming that the requirements of section 9-5 are otherwise satisfied.
[110] Goods and Services Tax Ruling: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to

Example 60 – the supply is provided to a non-resident individual in Australia for part of the time over which the services are performed

466. *Tom, a non-resident individual who is holidaying in Australia, falls over while shopping in a store in Australia. While in Australia Tom seeks legal advice from an Australian legal firm contracted for by his parents in New Zealand. Tom's parents are not in Australia when the legal services are performed. The legal firm, on behalf of Tom, writes to the shopping centre seeking out of pocket expenses and an amount for pain and suffering. Tom returns to New Zealand before the claim is settled. Further contact with the legal firm occurs from New Zealand.*

Paragraph (a) of item 3

467. *The supply of legal services is made to a non-resident, the parents who are not in Australia when the legal services are performed. The supply satisfies the requirements of paragraph (a) of item 3.*

Paragraph (b) of item 3

468. *What is being supplied is a service of seeking, on Tom's behalf, compensation resulting from an accident in Australia. The nature of the service is such that the supply is provided to Tom and therefore Tom is the entity that uses or enjoys the supply. Therefore, it is necessary to determine where use or enjoyment of the supply by Tom takes place.*

469. *Tom is a non-resident individual who is in Australia for part of the time when the service is performed. As the need for the supply arises from Tom's presence in Australia, the supply is provided to Tom in Australia and effective use or enjoyment of the supply does not take place outside Australia. To this extent paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.*

470. *Once Tom returns to New Zealand the supply is provided to Tom outside Australia and effective use or enjoyment of the supply takes place outside Australia. To this extent paragraph (b) of item 3 is satisfied and the supply is GST-free under item 3.*

471. *The consideration for the supply is required to be apportioned between the GST-free part of the supply (that part of the supply which is provided to Tom when he is in New Zealand), and the taxable*[111] *part of the supply (that part of the supply which is provided to Tom while he is in Australia).*

472. This is the same result that occurs for the supply under item 2 and subsection 38-190(3). Refer to Example 41, paragraphs 647 to 652 in GSTR 2005/6.

non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the *A New Tax system (Goods and Services Tax) Act 1999.*

[111] Assuming that the requirements of section 9-5 are otherwise satisfied.

Example 61 – supply made to a non-resident parent company and provided to another entity which is only in Australia for part of the time that the supply is provided to it

473. *NZ Co is a non-resident parent company. NZ Co does not carry on business in Australia either through a place of its own or through an agent acting on its behalf.*

474. *NZ Co engages an Australian market research company to assist its New Zealand subsidiary with product promotion in Australia. The New Zealand subsidiary has a presence in Australia, that is, an Australian branch, which sells various products to the Australian market. The Australian market research company deals only with personnel of the Australian branch and supplies all reports to the branch.*

475. *However, during the period over which the market research services are provided, the New Zealand subsidiary closes its Australian branch and centralises all product sales in New Zealand. The Australian market research company continues to undertake the same work for the New Zealand subsidiary and provides all reports to the Head Office in New Zealand.*

Paragraph (a) of item 3

476. *The supply of market research services by the Australian research company is made to NZ Co, a non-resident company that is not in Australia when the services are performed. The supply satisfies the requirements of paragraph (a) of item 3.*

Paragraph (b) of item 3

477. *The agreement requires the Australian research company to provide market research services to the New Zealand subsidiary of NZ Co to promote and market its products in Australia. The nature of the service is also such that the supply is provided to the New Zealand subsidiary. The supply is, therefore, provided to another entity, the New Zealand subsidiary and therefore the New Zealand subsidiary is the entity that uses or enjoys the supply. Therefore, it is necessary to determine where use or enjoyment of the supply by the New Zealand entity takes place.*

478. *The New Zealand subsidiary has a branch in Australia. The New Zealand subsidiary is therefore in Australia when the services are performed. The market research undertaken by the Australian research company is for the purposes of the Australian branch of the New Zealand subsidiary. The supply is therefore provided to the New Zealand subsidiary in Australia and effective use or enjoyment of the supply does not take place outside Australia.*

479. *However, the New Zealand subsidiary only has a presence in Australia for part of the time that the supply is provided to it. Once the Australian branch of the New Zealand subsidiary is closed, the New*

Zealand subsidiary no longer has a presence in Australia. The New Zealand subsidiary is no longer in Australia when the services are performed. Therefore, the supply is only provided to the New Zealand subsidiary in Australia, and effective use or enjoyment of the supply does not take place outside Australia, to the extent that the New Zealand subsidiary is in Australia and the supply is for the purposes of its presence in Australia. To this extent paragraph (b) of item 3 is not satisfied, the supply is not GST-free under item 3.

480. *To the extent that the New Zealand subsidiary is not in Australia and thus the supply is for the purposes of its presence in New Zealand, the supply is provided to it outside Australia and effective use or enjoyment of the supply takes place outside Australia. To this extent paragraph (b) of item 3 is satisfied and the supply is GST-free under item 3.*

481. *The consideration for the supply is required to be apportioned between the GST-free part of the supply (that part of the supply which is provided to the New Zealand subsidiary when it no longer has a branch in Australia), and the taxable*[112] *part of the supply (that part of the supply which is provided to the Australian branch of the New Zealand subsidiary).*

482. This is the same result that occurs for the supply under item 2 and subsection 38-190(3). Refer to Example 42, paragraphs 653 to 661 in GSTR 2005/6.

A supply is provided to both an entity that is not in Australia and another entity in Australia

483. Sometimes a supply of services made to an entity that is not in Australia may be provided to that entity and another entity in Australia. The supply is not divisible with separate parts of the supply being provided to each entity. In that case, the supply is provided to an entity in Australia and thus effective use or enjoyment of the supply does not take place outside Australia. No apportionment is required. The following example illustrates this.

Example 62 – supply of pathology services made and provided to a non-resident and also required to be provided to another entity in Australia

484. *A non-resident pharmaceutical company runs a global clinical trial for a new drug. Australian medical practitioners engaged by the pharmaceutical company are responsible for recruiting and monitoring the Australian patients included in the trial. The company does not carry on business in Australia either through a place of business of its own or through any agent acting on its behalf.*

485. *The non-resident pharmaceutical company contracts with an Australian pathology company for the testing of samples from the*

[112] Assuming that the requirements of section 9-5 are otherwise satisfied.

Australian patients. The testing of samples is part of the pharmaceutical company's assessment of the effectiveness of the drug and the medical practitioners' services of monitoring the health of their trial patients, as required under the contract with the pharmaceutical company. It is essential to the performance of the contract between the non-resident pharmaceutical company and the Australian medical practitioners that the pathology services are carried out for both the Australian medical practitioners and the non-resident pharmaceutical company.

Paragraph (a) of item 3

486. *The supply of pathology services is made to the non-resident pharmaceutical company that is not in Australia. The supply satisfies the requirements of paragraph (a) of item 3. The supply is not a supply of work physically performed on goods. The supply is a supply of information that involves work to produce that information and thus the supply is one of performing services.*

Paragraph (b) of item 3

487. *The pathology service is a service of carrying out certain tests and preparing a report. The service as a whole (the testing and the report) is carried out as part of the drug company assessment of the effectiveness of the new drug and the medical practitioners monitoring of the health of their patients involved in the drug trial, as required under the terms of their contract with the non-resident pharmaceutical company. The medical practitioners are not merely supplied with a copy of the report for interest only. If the medical practitioners did not receive the pathology reports commissioned by the non-resident company, each practitioner would need to order his or her own pathology tests in monitoring the patients' health, as required.*

488. *In this circumstance the supply of pathology services is provided to both the non-resident pharmaceutical company and the Australian medical practitioners. Therefore, both entities are relevant in determining where effective use or enjoyment of the supply takes place. If the supply is provided to either entity in Australia, effective use or enjoyment of the supply does not take place outside Australia.*

489. *The supply of pathology services is provided to each medical practitioner in Australia and therefore effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.*

490. This is the same result that occurs for the supply under item 2 and subsection 38-190(3). Refer to Example 43, paragraphs 663 to 671 in GSTR 2005/6.

Apportionment method

491. If a supply is partly GST-free under item 3 the supplier is required to apportion the consideration between the GST-free and taxable[113] parts of the supply.

492. The supplier can use any reasonable method that is supportable in the particular circumstances to apportion the consideration.[114]

493. The supplier should keep records that explain the method used.[115]

Apportionment when a supply is provided on a periodic or progressive basis

494. Under Division 156, if a taxable supply is made for a period or on a progressive basis and the consideration is provided on a periodic or progressive basis, the GST payable is attributed as if each periodic or progressive component of the supply were a separate supply.[116]

495. If a supply is provided for a period of time with consideration to be given on a periodic basis and the entity to which the supply is provided, (or is required to be provided), is in Australia for part of that time, it may not be possible for the supplier to identify the taxable[117] part of the supply at the beginning of the period over which the supply is provided. This is because there may be no way for the supplier to determine in advance whether, and to what extent, the supply is provided to that entity in Australia during the period over which the supply is provided.

496. However, it is possible for the supplier to identify the extent to which a supply is provided to an entity in Australia for the periodic components of the supply. Accordingly, we accept that this is the basis on which GST payable on the supply (and input tax credits, if it is a creditable acquisition for the other entity) is attributable to tax periods.

Example 63 – a supply is provided to a non-resident individual who is in Australia for part of the time when the service is performed

497. *Sylvia is a New Zealand resident who carries on business in New Zealand and Australia as a sole trader. She has a one year*

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[113] Assuming that the requirements of section 9-5 are otherwise satisfied.
[114] Refer to GSTR 2001/8 Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts at paragraphs 92 to 113.
[115] Refer to GSTR 2001/8 at paragraphs 25 to 30 and paragraph 70(1)(d) of the *Taxation Administration Act 1953*.
[116] Section 156-25 provides that Division 156 does not apply to a supplier who accounts on a cash basis.
[117] Assuming that the requirements of section 9-5 are otherwise satisfied.

contract with an Australian company, Aus Computers, under which the company is to provide services including:

- *software development; and*
- *training as required.*

498. *The contract provides for charges to be calculated on an hourly basis ($100/hour plus GST (if any)) and invoices issued on a monthly basis. Aus Computers does not account for GST on a cash basis. It has one month tax periods.*

499. *It is agreed that Aus Computers' staff will travel to Auckland to discuss Sylvia's business requirements at various times throughout the course of the supply and that Sylvia and or her employees will come to Australia as necessary.*

500. *In March, Aus Computers requests Sylvia to come to Sydney to receive training. Sylvia sends two employees for training in Australia. The employees are in Australia to attend training classes for two weeks in March. The employees also take in the sights of Sydney during this time.*

501. *Aus Computers' charges for the first three months of the supply including the GST treatment are as set out below:*

Invoice date	***Amount***	***Hours billed***
4 March 2005 (for services performed in February)	*$3,000 (no GST payable)*	*30*
6 April 2005 (for services performed in March)	*$10,600 (including $600 GST)*	*100 (60 hours attributable to training of the employees in Australia)*
5 May 2005 (for services performed in April)	*$2,000 (no GST payable)*	*20*

Explanation

Paragraph (a) of item 3

502. *The supply of software development and computer training services is made to Sylvia a non-resident who is not in Australia when the software development or computer training is performed. The supply satisfies the requirements of paragraph (a) of item 3.*

Paragraph (b) of item 3

503. *The supply to Sylvia is GST-free under item 3 to the extent that the effective use or enjoyment of the supply takes place outside Australia.*

Provided to another entity – training

504. *The training services are provided to each employee as it is the employee that is the person that is trained. Each employee's presence in Australia is integral to the performance of the training and the supply is therefore provided to the employees in Australia. As the supply is provided to the employees in Australia effective use or enjoyment of the supply does not take place outside Australia and paragraph (b) of item 3 is therefore not satisfied. The supply, to the extent it is of training of Sylvia's employees, is not GST-free under item 3.*

Provided to the same entity – software development

505. *The supply of software development services is not provided to another entity; the supply is made (and provided) to Sylvia a sole trader. Therefore, as Sylvia, a non-resident, is not in Australia when the supply is provided the supply is provided to Sylvia outside Australia and is effectively used or enjoyed outside Australia. The supply, to the extent it is of software development services, is GST-free under item 3.*

Working out the GST payable

506. *There is no GST payable for the tax period ending 31 March 2005 (refer to invoice of 4 March 2005)*[118] *because the supply is covered by item 3 and is therefore GST-free. For the whole of the time when the services are performed, the services are not provided to any entity in Australia (that is either Sylvia or her employees) and therefore effective use or enjoyment of the supply takes place outside Australia. Similarly, there is no GST payable for the tax period ending 31 May 2005 (refer to invoice of 5 May 2005).*

507. *There is GST payable for the tax period ending 30 April 2005 as it is during this time that Sylvia's employees are trained in Australia. To work out the GST payable that is attributable to the tax period ending 30 April 2005 (refer to invoice of 6 April 2005), it is necessary to identify the taxable part of the supply. The supply is taxable to the extent that the supply of training is provided to the employees in Australia. To this extent, effective use or enjoyment of the supply does not take place outside Australia and paragraph (b) of item 3 is not satisfied.*

508. *To work out the value of the taxable part of the supply, it is necessary to apportion the consideration on a reasonable basis. As the supply is provided to the employees in Australia for the two weeks that they are in Australia, the effective use or enjoyment of the supply takes place in Australia during that two weeks.*

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[118] As Aus Computers does not account for GST on a cash basis, any GST payable by Aus Computers is attributable to the tax period in which any of the consideration is received or, if before any consideration is received, an invoice is issued, the tax period in which the invoice is issued. Therefore, the invoice issued on 4 March 2005 is attributable to the tax period ending 31 March 2005.

509. *The supply is taxable to the extent that the consideration relates to the part of the supply performed during this time. The circumstances of this supply are such that a time basis is a reasonable basis on which to apportion the consideration, that is, using the hours billed while the supply is provided to the employees in Australia (60 hours) as a proportion of the total hours billed for that tax period (100 hours) to work out the value of the taxable part of the supply.*

510. *The GST attributable to the tax period ending 30 April 2005 is calculated as follows:*

> *Value of the taxable part: (60* ÷ 100**) × $10,000*** = $6,000*
>
> *GST payable: $6,000 × 10% = $600*
>
> *Consideration payable: $10,000 + $600 = $10,600*
>
> ** Number of hours billed during the period that the supply is provided to the employees in Australia.*
>
> *** Total number of hours billed in the relevant tax period to which the amount invoiced relates*
>
> **** Total amount invoiced (excluding GST) in the relevant tax period*

Supplier accounts on a cash basis

511. If a supplier, who accounts on a cash basis, makes a supply for a period or on a progressive basis and the consideration is given on a periodic or progressive basis, similar issues may arise to those referred to at paragraph 495. The following example illustrates how to attribute GST payable in that case.

Example 64 – a supply is provided to a non-resident individual in Australia for part of the time when the legal services are performed

512. *William, an English tourist, is injured while on holidays in Australia. While in Australia recovering from his injuries, William's parents, who are non-residents, engage Simon, a solicitor, to seek compensation on behalf of William.*

513. *The case takes three months to finalise. During the first month (April 2005) William is in Australia in hospital. Simon visits William in hospital to discuss his case. Simon commences action on behalf of William. William returns home to England at the end of the first month. Subsequently, William travels to Australia to attend a mediation conference on 20 June 2005. William meets with Simon prior to and after the conference. The meetings and the conference take place over a period of five days. The matter is settled as a result of the conference.*

514. *Simon's hourly rate is $200 (plus GST (if any)) and he bills clients on a monthly basis for work done during the month. He accounts for GST quarterly and on a cash basis.*

515. *Simon receives the following payments for his services to William:*

Payment date	***Amount***	***Hours billed***
5 May 2005 (for services provided in April 2005 while Simon was in Australia)	*$7,480 (including $680 GST payable)*	*34 (34 hours attributable to period supply is provided to William in Australia)*
7 June 2005 (for services provided in May 2005)	*$2,600 (no GST payable)*	*13*
10 July 2005 (for services provided in June 2005 for which Simon was in Australia for part of the time))	*$2,100 (including $100 GST)*	*10 (5 hours attributable to period supply is provided to William in Australia)*

Explanation

Paragraph (a) of item 3

516. *The supply of legal services is made to non-residents who are not in Australia when the services are performed. The supply satisfies the requirements of paragraph (a) of item 3.*

Paragraph (b) of item 3

517. *The legal services are provided to William and not the non-resident parents. William is therefore the relevant entity for the purposes of determining where effective use or enjoyment of the supply takes place.*

518. *The legal services, which are provided to William, are not GST-free under item 3 to the extent that the services are provided to William in Australia.*

519. *As Simon accounts for GST on a cash basis, GST payable on the supply of legal services is attributable to a tax period to the extent that consideration is received in that tax period. Therefore the consideration received in a quarterly tax period for the supply of the legal services must be apportioned on a reasonable basis to the extent that the supply is provided to William in Australia during that quarterly tax period.*

Quarterly tax period ended 30 June 2005

520. *As a result of the accident in Australia William's need for the supply of legal services arises in Australia. The supply is therefore provided to William in Australia to the extent that he is physically in Australia when the services are provided. During April 2005 the supply is therefore provided to William in Australia. To this extent effective use or enjoyment of the supply does not take place outside Australia and is*

not GST-free under item 3. The supply is not, however, provided to William in Australia to the extent that William is not physically located in Australia (that is May 2005). To this extent effective use or enjoyment of the supply takes place outside Australia and is GST-free under item 3. Therefore, the supply performed in the quarterly tax period ending 30 June 2005 is partly taxable and partly GST-free.

521. *The circumstances of this supply are such that a time basis is a reasonable basis on which to apportion the consideration, that is, using the hours billed while William is in Australia (34 hours) as a proportion of the total hours billed for that quarterly tax period (47 hours – that is 34 hours billed in May 2005 + 13 hours billed in June 2005) to work out the value of the taxable part of the supply.*

522. *The GST attributable to the quarterly tax period ended 30 June 2005 is calculated as follows:*

> *Value of the taxable part: (34* ÷ 47**) × $9,400*** = $6,800*
>
> *GST payable: $6,800 × 10% = $680*
>
> *Consideration payable: $9,400 + $680 = $10,080*
>
> ** Number of hours billed during the period the supply is provided to William in Australia and to which the consideration received relates (that is for services provided in April 2005 for which consideration was received on 5 May 2005)*
>
> *** Total number of hours billed in the quarterly tax period to which the consideration relates (that is for services provided in April and May 2005 for which consideration was received on 5 May 2005 and 7 June 2005 respectively)*
>
> **** Total consideration (excluding GST) received from William in the quarterly tax period ending 30 September 2005 (that is 47 hours × $200)*

Quarterly tax period ended 30 September 2005

523. *There is also GST payable on the supply for the quarterly tax period ended 30 September 2005. The consideration received in that tax period includes consideration for services that are performed when William is in Australia. The supply is taxable to the extent that the supply is provided to William in Australia. To work out the value of the taxable part of the supply, it is necessary to apportion the consideration on a reasonable basis.*

524. *As William is in Australia and his presence is integral to the provision of the supply, it is considered that the supply is provided to William in Australia for five days. To this extent effective use or enjoyment of the supply does not take place outside Australia and is not GST-free under item 3. The part of the supply performed during this time is therefore the taxable part of the supply. The circumstances of this supply are such that a time basis is a reasonable basis on which to apportion the consideration that is, using the hours billed while William is in Australia (5 hours) as a*

proportion of the total hours billed for that quarterly tax period (10 hours) to work out the value of the taxable part of the supply.

525. *The GST attributable to the quarterly tax period ended 30 September 2005 is calculated as follows:*

Value of the taxable part: (5 ÷ 10**) × $2,000*** = $1,000*

GST payable: $1,000 × 10% = $100

Consideration payable: $2,000 + $100 = $2,100

** Number of hours billed during the period the supply is provided to William in Australia and to which the consideration received relates*

*** Total number of hours billed in the quarterly tax period to which the consideration relates*

**** Total consideration (excluding GST) received from William in the quarterly tax period ending 30 September 2005*

Apportionment where the supply is performed over more than one tax period but consideration is paid in earlier tax period

526. If a supply is performed over more than one tax period and the GST (if any) on the supply is attributable to a tax period prior to the completion of the supply (for example, consideration is fully paid in one tax period but provision of the supply to an entity is spread across two or more later tax periods), the supplier must use a reasonable basis for determining if, and to the extent, the supply is taxable. That is, the supplier must use a reasonable basis to determine the extent to which the supply is to be provided to the entity in Australia and thus the extent to which effective use or enjoyment of the supply does not take place outside Australia.

527. If there is a change in circumstance such that the supply becomes either wholly taxable or wholly GST-free the supplier has an adjustment event. The adjustment may be either an increasing or a decreasing adjustment depending upon whether the corrected GST amount is greater than, or less than, the previously attributed GST amount.[119]

[119] Refer to paragraphs 12 to 15 and 72 to 87 in GSTR 2000/19 Goods and services tax: making adjustments under Division 19 for adjustment events.

Part VII – application of paragraph (b) of item 3 to subcontract arrangements and global supplies

528. In this Part we explain the application of paragraph (b) of item 3 to certain complex arrangements as follows.

529. We discuss **subcontract arrangements** and provide two examples where a supply by an Australian supplier to a non-resident entity is subcontracted to another Australian supplier (see Example 65, paragraphs 546 to 555 and Example 66, paragraphs 556 to 566).

530. We also discuss **global supply arrangements** and provide an example of a supply of due diligence services (Example 69, paragraphs 577 to 597).

531. For subcontract and global supply arrangements we also summarise examples from GSTR 2005/6[120] and give the GST outcome under item 3 (and item 2 for comparative purposes). These examples are relevant to this Ruling as a supply, that is not GST-free under item 2 because of the application of subsection 38-190(3) (that is, the supply is provided to another entity in Australia), is also not GST-free under item 3 as effective use or enjoyment of the supply does not take place outside Australia (that is, the supply is provided to an entity in Australia).

Subcontract arrangements[121]

532. GSTR 2005/6 comprehensively discusses subcontract arrangements at paragraphs 713 to 755. Although supplies illustrated in that Ruling are typically made to a non-resident entity (as the focus in that Ruling is on item 2 and subsection 38-190(3)), the principles in that Ruling are illustrative of when a supply under a subcontract arrangement is provided to another entity in Australia and, to this extent, the principles in that Ruling are equally applicable to this Ruling. A supply that is provided to an entity in Australia is not used or enjoyed outside Australia.

533. A subcontract arrangement could arise for example where a non-resident supplier enters into a contract with an entity in Australia (the customer) under which it is obliged to provide certain services to that customer. However, the non-resident supplier enters into a contract with another Australian entity to provide the services to the customer.

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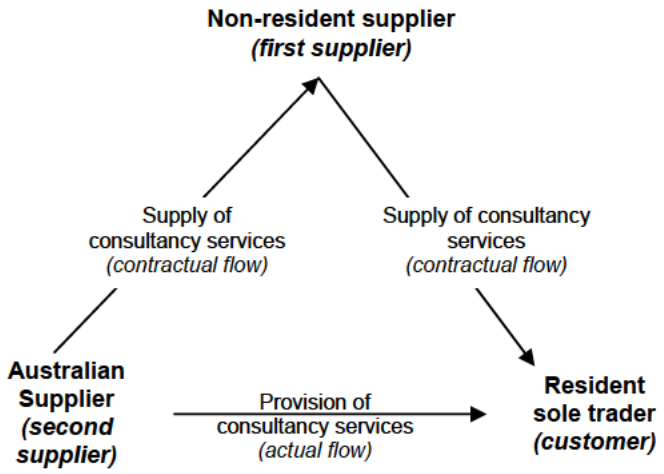
[120] Goods and Services Tax Ruling: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the *A New Tax system (Goods and Services Tax) Act 1999.*

[121] That is, a supplier subcontracts the provision of services to its customer to another supplier.

534. Using a supply of consultancy services as an example, a subcontract arrangement is shown in diagrammatic form as follows:



Supply by the first (non-resident) supplier

The character and nature of the supply

535. The first (non-resident) supplier is obliged to supply services (for example, consultancy services) to the resident sole trader. To meet that obligation the first supplier subcontracts a second (Australian) supplier to provide those consultancy services to the resident sole trader.

536. Neither the character nor the nature of the supply of consultancy services by the first supplier to the resident sole trader is changed by the fact that the actual consultancy service is performed by another subcontracted supplier (or a subcontractor of that subcontractor etc). The supply by the first supplier is neither the supply of a right nor the supply of an arranging service. The supply is, and remains, a supply of consultancy services, even though the provision of that service to the resident sole trader is carried out by the subcontracted second supplier.

537. We consider that a supply is only the supply of arranging for a service to be provided to a customer (that is, an arranging service) if that is precisely what the first supplier has, in fact, been engaged to supply. If, for example, the first supplier arranges for a second supplier to contract with the customer to supply the required thing, we agree the first supplier is only responsible for arranging that service. See Example 68, page 126.

538. Further, if the first supplier arranges for a second supplier to supply a particular thing to a customer, the customer typically has no legal recourse against the first supplier for the second supplier's failure to supply the thing. If the second supplier fails to supply that thing, the customer usually only has legal recourse against the second supplier. If the first supplier promises to arrange for the supply of a thing and that promise is not carried out, the customer then

usually has legal recourse against the first supplier for breach of its promise to arrange for the supply by a second supplier.

Connected with Australia

539. The supply of consultancy services by the first supplier (non-resident) to the resident sole trader is connected with Australia to the extent that those services are performed in Australia (albeit by the second supplier): paragraph 9-25(5)(a). If the other requirements for making a taxable supply[122] are met, the supply by the non-resident to the resident sole trader is a taxable supply.

540. The approach in this Ruling concerning subcontract arrangements is consistent with the views expressed in GSTR 2005/6.[123]

Determining where effective use or enjoyment of the supply takes place

541. If the supply satisfies the requirements of paragraph (a) of item 3 (that is, the resident sole trader is not in Australia when the thing supplied is done) it is necessary to determine whether use or enjoyment of the supply takes place outside Australia. The supply of consultancy services by the first supplier is made (and provided) to the resident sole trader. Therefore, the resident sole trader is the entity that uses or enjoys the supply. If the supply is provided to the resident sole trader in Australia, effective use or enjoyment of the supply takes place in Australia and the supply is not GST-free under item 3. We explain in Part III (paragraphs 255 to 385) of the Explanation section where effective use or enjoyment of a supply by an individual takes place.

Supply by the second (Australian) supplier

The character and nature of the supply

542. The second supplier, pursuant to its contract with the first supplier, is obliged to supply consultancy services to the resident sole trader. The character and nature of the supply by the second supplier is also a supply of consultancy services. The supply is not a supply of a right to have services supplied to the Australian customer.[124]

Connected with Australia

543. The supply of consultancy services by the second supplier to the resident sole trader is connected with Australia to the extent that those services are performed in Australia or the supplier makes the

[122] Section 9-5.
[123] An alternative to our view is discussed at paragraphs 723 to 724 of GSTR 2005/6.
[124] An alternative to our view is discussed at paragraph 727 of GSTR 2005/6.

supply through an enterprise that the supplier carries on in Australia (paragraphs 9-25(5)(a) and (b). If the other requirements for making a taxable supply[125] are met, the supply by the Australian supplier is a taxable supply.

Determining where effective use or enjoyment of the supply takes place

544. If the supply made to the first non-resident supplier satisfies the requirements of paragraph (a) of item 3 (that is, the non-resident is not in Australia when the thing supplied is done), it is necessary to determine whether use or enjoyment of the supply takes place outside Australia. The supply of consultancy services by the second supplier is made to the first supplier but is provided to the resident sole trader. Therefore, the resident sole trader is the entity that uses or enjoys the supply. If the supply is provided to the resident sole trader in Australia, effective use or enjoyment of the supply does not take place outside Australia and the supply is not GST-free under item 3. We explain in Part III (paragraphs 255 to 385) of this Ruling where effective use or enjoyment of a supply by an individual takes place.

545. The following example illustrates the application of the above principles.

Example 65 – supply of training services made to a non-resident company and provided to another entity, a non-resident employee, in Australia – part of supply of training services subcontracted to another entity

546. *An Australian entity, Aus Co (first supplier), enters into an agreement with a non-resident company to provide its employees with management training and occupational health and safety training. Aus Co subcontracts the management component of the training to another Australian entity, Management Training Inc (second supplier). The employees of the non-resident company attend the training in Australia.*

547. *The non-resident company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf.*

Supply by Aus Co to the non-resident company

548. *A supply of training services (the occupational health and safety training component and the management component) is made by Aus Co to a non-resident company that is not in Australia when the thing supplied is done. Therefore, the supply by Aus Co satisfies paragraph (a) of item 3.*

[125] Section 9-5.

549. *While the supply of training services is made to the non-resident company it is provided to its employees who attend the training.*[126] *Therefore, the employees are the entities that use or enjoy the supply and thereby each employee is the relevant entity for the purposes of determining where effective use or enjoyment of the supply takes place.*

550. *Although Aus Co only provides part of the training itself, (having subcontracted the management training to Management Training Inc), Aus Co provides, or is required to provide, the occupational health and safety training and the management training to the employees of the non-resident company in Australia. As the training is provided, or is required to be provided, to the employees in Australia, effective use or enjoyment of the supply does not take place outside Australia.*[127] *Paragraph (b) of item 3 is not satisfied and the supply by Aus Co to the non-resident company is not GST-free under item 3.*

Supply by Management Training Inc made to Aus Co but provided to employees of the non-resident company

551. *A supply of management training services is made by Management Training Inc to Aus Co. As the supply by Management Training Inc is made to a recipient (Aus Co) who is in Australia when the thing supplied is done the supply by Management Training Inc does not satisfy the requirements of paragraph (a) of item 3 unless subsection 38-190(4) applies to extend the application of paragraph (a) of item 3.*

552. *The supply of training services by Management Training Inc is a supply under an agreement entered into with a resident entity, Aus Co. Paragraph 38-190(4)(a) is therefore satisfied.*

553. *It is then necessary to consider if paragraph 38-190(4)(b) is satisfied.*

554. *The training services are provided, or are required to be provided to another entity, the employees. The employees are required to attend the training in Australia and therefore those services are provided to the employees in Australia. Paragraph 38-190(4)(b) is therefore not satisfied. Consequently paragraph (a) of item 3 is not taken to be satisfied and therefore the supply is not GST-free under item 3.*

555. *While it is unnecessary to consider paragraph (b) of item 3, it is also not satisfied. As it is training services provided to the employees of the non-resident company, the employees are the entities that use or enjoy the supply and thereby each employee is the relevant entity for the purposes of determining where effective use or enjoyment of the supply takes place. As the training is provided to*

[126] Refer to paragraphs 245 to 247, Part II of the Explanation section.
[127] Refer to paragraphs 275 to 278, 280 to 282 and 312 to 329, Part III of the Explanation section.

the employees in Australia, effective use or enjoyment of the supply does not take place outside Australia.[128]

Example 66 –supply of labour services made to a non-resident company – supply of labour services subcontracted to another entity

556. *An Australian entity, Aus Co, enters into an agreement with a non-resident company to provide labour services to that non-resident company. Aus Co enters into an agreement with another resident company Oz Staff 4hire whereby it is charged a fee by Oz Staff 4hire for it to send one of its employees to work at the London office of the non-resident company for a period of three months.*

557. *The labour services supplied do not involve work that is directly connected with goods or real property and thus item 1 is not applicable.*

558. *The non-resident company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf.*

Supply by Aus Co to the non-resident company

559. *A supply of labour services is made by Aus Co to a non-resident company that is not in Australia when the thing supplied is done. Therefore, the supply by Aus Co satisfies paragraph (a) of item 3.*

560. *The supply of the labour services is also provided by Aus Co to the non-resident company. Therefore, the non-resident company is the entity that uses or enjoys the supply and thereby the relevant entity for the purposes of determining where effective use or enjoyment of the supply takes place. The supply is provided to an entity that does not have a presence in Australia. Therefore, effective use or enjoyment of the supply takes place outside Australia.*[129] *Paragraph (b) of item 3 is satisfied and the supply by Aus Co to the non-resident company is GST-free under item 3.*

Supply by Oz Staff 4hire to Aus Co

561. *The supply of labour services by Oz Staff 4hire is made to Aus Co a resident company that is in Australia when the services are performed. The supply does not therefore satisfy paragraph (a) of item 3 unless subsection 38-190(4) applies to extend the application of paragraph (a) of item 3.*

[128] Refer to paragraphs 275 to 278, 280 to 282 and 312 to 329, Part III of the Explanation section.
[129] Refer to paragraphs 391 to 397, Part IV of the Explanation section.

562. *The supply of labour services by the Oz Staff 4hire is a supply under an agreement entered into with a resident entity, Aus Co. Paragraph 38-190(4)(a) is therefore satisfied.*

563. *It is then necessary to consider if paragraph 38-190(4)(b) is satisfied.*

564. *The labour services are provided, or are required to be provided, to another entity, the non-resident company. As the non-resident company does not have a presence in Australia, the supply is provided to that entity outside Australia. The supply therefore satisfies subsection 38-190(4) and paragraph (a) of item 3 is satisfied.*

565. *As discussed above, the supply of the labour services by Oz Staff 4hire is provided to the non-resident company. It is therefore the non-resident company that uses or enjoys the supply and thereby is the relevant entity for the purposes of determining where effective use or enjoyment of the supply takes place. As it is already determined that the supply is provided to the non-resident company outside Australia, the effective use or enjoyment of the supply by the non-resident company takes place outside Australia. Paragraph (b) of item 3 is satisfied.*

566. *The supply is, therefore, GST-free under item 3 provided the other requirements of item 3 are satisfied.*[130]

Further examples

567. GSTR 2005/6 provides further examples which illustrate the application of item 2 and subsection 38-190(3) to subcontract arrangements.

568. These examples are summarised in the tables below and we illustrate the GST treatment of these supplies under item 3 (and item 2 for comparison purposes). It can be seen that the GST outcome under each of these items is the same.

569. For further details of these supplies you should refer to the examples in GSTR 2005/6. Cross references are given in the table.

[130] That is, it is not a supply of work physically performed on goods in Australia or a supply directly connected with real property in Australia.

E.g. #	**A supply of accounting services to a non-resident entity is subcontracted to another supplier** *(Per Example 46, paragraphs 733 to 740, GSTR 2005/6)*	**Is supply GST-free under item 2?**	**Entity that uses or enjoys the supply…**	**Effective use or enjoyment of the supply…**	**Is supply GST-free under item 3?**
67	*The facts and circumstances* • A non-resident company contracts with an Australian accounting firm for the supply of accounting services. • The accounting services are required under the agreement to be provided to the Australian subsidiary of the non-resident company. • The non-resident does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • The Australian accounting firm subcontracts with another Australian supplier to provide the accounting services to the Australian subsidiary. *The GST treatment of the accounting services supplied by the Australian accounting firm to the non-resident company* • Refer the columns opposite.	**No** as ss38-190(3) negates the GST-free status under item 2	**Australian subsidiary** as the accounting services are required to be provided to the Australian subsidiary	**does not take place outside Australia** as the supply is provided to the Australian subsidiary in Australia	**No**
E.g. #	**A supply of an arranging service is made and provided to a non-resident entity** **A supply of design services is made and provided to the non-resident entity** *(Per Example 47, paragraphs 742 to 754, GSTR 2005/6)*	**Is supply GST-free under item 2?**	**Entity that uses or enjoys the supply…**	**Effective use or enjoyment of the supply…**	**Is supply GST-free under item 3?**
68	*The facts and circumstances* • An events organiser in Australia agrees with a non-resident company to arrange for the making of a supply of design services for the non-resident's forthcoming exhibition in Australia. The non-resident company does not carry on business in Australia through a place of business of its own or through an agent acting on its behalf. • The events organiser has dealt with Aus Design in the past and arranges for contracts to be made between that company and the non-resident company for the supply of the design services for the proposed product displays of the non-resident. *Supply by the Australian events organiser to the non-resident company* • The Australian events organiser supplies an arranging service, which is made and provided, to the non-resident company that is not in Australia in relation to the supply. *Supply by Aus Design to the non-resident company* • Aus Design supplies design services to the non-resident company under an agreement entered into with the non-resident company. *The GST treatment of each supply made by the Australian events organiser and Aus Design* • Refer the columns opposite.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**Non-resident company**	**takes place outside Australia** as the supply is provided to the entity outside Australia	**Yes**

Global supplies[131]

570. GSTR 2005/6 comprehensively discusses global supply arrangements at paragraphs 756 to 859. Although supplies illustrated in that Ruling are typically made to a non-resident entity (as the focus in that Ruling is on item 2 and subsection 38-190(3)), the principles in that Ruling are illustrative of when a supply under a global supply arrangement is provided to another entity in Australia and, to this extent, the principles in that Ruling are equally applicable to this Ruling. A supply that is provided to an entity in Australia is not used or enjoyed outside Australia.

571. In many multi-national groups, a range of services are provided to group members through an internal service provider – typically the parent or a separate dedicated entity. Such services include accounting, auditing, legal, information technology, research and development and financial services. The internal service provider may charge a specific fee to the relevant group member that receives the service or make a cost allocation to that group member to recover costs. The fee or cost allocation may be separately identified or form part of a bundled charge or cost allocation, incorporated into a management fee.

The nature of the supply by the internal service provider

572. The internal service provider may either perform the services for the group members itself or contract with an external provider to perform the services. In the latter case, there is usually a head agreement between the internal service provider and the external provider (the head supplier) and a range of subcontracting agreements (between the head supplier and other entities) to enable the head supplier to fulfil its obligations to provide services to members of the global group.

573. Irrespective of whether the service is provided by the internal service provider itself or is subcontracted out, the nature of the supply made by the internal service provider or other external service provider does not, in our view; change even if the internal service provider or other external service provider is not in a position to physically perform those services. If the internal or other external service provider has agreed (either by written agreement or otherwise) to supply services (for example audit services) to members of the multi-national group, the supply that it makes to members of the group is the supply of those audit services, regardless of whether that entity performs those services itself or subcontracts the performance to another entity (or entities). (Refer to paragraphs 532 to 538 for a discussion of subcontract arrangements.)

[131] This expression refers to supplies made by a centralised entity (typically a parent or other separate dedicated entity) to other members of a corporate group. Such supplies include accounting, auditing, legal, information technology, research and development and financial services.

574. The approach in this Ruling, concerning global supply arrangements, is consistent with the views expressed in GSTR 2005/6.

Determining where effective use or enjoyment of the supply takes place

575. The supply by the internal or other external service provider is provided, or required to be provided, to the member(s) of the group. Therefore, the member(s) of the group are the entities that use or enjoy the supply and thereby the relevant entities for the purposes of determining where effective use or enjoyment of the supply (e.g., audit services) takes place. See Part IV (paragraphs 386 to 446) which explains where effective use or enjoyment of a supply by a company, partnership, corporate limited partnership or trust takes place.

576. The following example illustrates the application of the above principles.

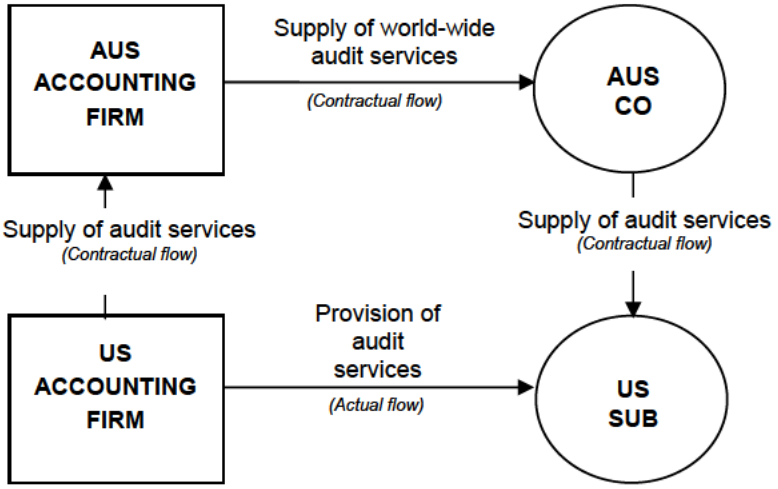
Example 69 – a supply of global audit services by a resident accounting firm to an Australian resident parent company – the resident accounting firm contracts a non-resident accounting firm to supply some services

577. *An Australian resident parent company, Aus Co, engages an Australian accounting firm, Aus Accounting, to supply audit services to the world-wide company group. Aus Accounting charges Aus Co on a monthly basis for services rendered in the immediately preceding month.*

578. *US Sub, a United States subsidiary of Aus Co, requires audit services – in particular a due diligence service for a possible business acquisition. Aus Accounting contracts with a US accounting firm for the provision of audit services to the US Sub.*

579. *Neither US Sub, nor the US accounting firm, carry on business in Australia through a place of business of its own or through an agent acting on its behalf.*

580. *The facts are illustrated as follows:*



581. *Aus Co is billed by Aus Accounting for the audit services provided to the US Sub. Aus Co charges US Sub for the cost of the audit.*

Supply by Aus Accounting to Aus Co

582. *Aus Accounting is engaged to provide audit services to the world-wide group of Aus Co. Aus Accounting has affiliates throughout the world with the expertise to carry out country-specific audits. As and when a foreign subsidiary requires audit services, Aus accounting firm subcontracts the performance of that service to an affiliate in the relevant foreign country.*

Character and nature of the supply by Aus Accounting to Aus Co

583. *The character of the supply by Aus Accounting to Aus Co is a service. Aus Accounting is engaged to supply audit services. The exact nature of the supply depends on the facts and circumstances of the particular audit. In this example, a due diligence service is to be carried out for US Sub.*

584. *The fact that Aus Accounting subcontracts this part of the audit service to another supplier, US Accounting, does not alter the character and nature of the service supplied by Aus Accounting to Aus Co. The supply remains the supply of audit services (refer paragraphs 532 to 538 for a discussion of subcontract arrangements).*

Paragraph (a) of item 3

585. *The supply of audit services by Aus Accounting is made to Aus Co, a resident entity that is in Australia when the audit services are performed. The supply does not therefore satisfy paragraph (a) of item 3 unless subsection 38-190(4) applies.*

Subsection 38-190(4)

586. *The supply of audit services by Aus Accounting to Aus Co is a supply under an agreement entered into with a resident. Paragraph 38-190(4)(a) is therefore satisfied.*

587. *It is then necessary to determine if paragraph 38-190(4)(b) is satisfied.*

588. *What is being supplied is the service of auditing a business as part of a due diligence being carried out by US Sub. The due diligence service is required to be provided to US Sub, another entity.*

589. *As US Sub has no presence in Australia, the supply is provided to that entity outside Australia.*

590. *Subsection 38-190(4) is therefore satisfied and the supply by Aus Accounting to Aus Co is taken to be a supply made to a recipient who is not in Australia. Paragraph (a) of item 3 is therefore satisfied by the operation of subsection 38-190(4).*

Paragraph (b) of item 3

591. *As discussed at paragraph 587, the supply of the audit services by Aus Accounting is required to be provided to US Sub outside Australia. Therefore effective use or enjoyment of the supply takes place outside Australia.*

592. *Paragraph (b) of item 3 is therefore satisfied. The supply by Aus Accounting to Aus Co is therefore GST-free under item 3.*[132]

Supply by US Accounting to Aus Accounting

Supply not connected with Australia (subsection 9-25(5))

593. *US Accounting makes a supply of audit services to Aus Accounting. The supply by US Accounting only falls for consideration under the Australian GST system if it is connected with Australia (paragraph 9-25(5)(a) and (b)). If the supply by US Accounting is not connected with Australia it is outside the scope of the Australian GST system.*

594. *The audit service conducted by US Accounting is not required to be done in Australia. Secondly, the facts state that US Accounting does not carry on business in Australia through a place of business of its own or through an agent acting on its behalf. Therefore the supply by US Accounting is not connected with Australia and it is not necessary to consider the supply further for Australian GST purposes.*

[132] The requirement in item 3 that the supply is not a supply of work physically performed on goods situated in Australia and is not a supply directly connected with real property situated in Australia is also satisfied.

Supply by Aus Co to US Sub

595. *A supply of audit services is made by Aus Co to US Sub. Aus Co charges US Sub for the cost of the audit service by making a cost allocation to US Sub. The cost allocation covers the audit service and associated administrative and management costs. The facts state that US Sub does not carry on business in Australia through a place of business of its own or through an agent acting on its behalf. The supply of audit services by Aus Co is therefore made to an entity that is not in Australia when the thing supplied is done. The supply therefore satisfies paragraph (a) of item 3.*

596. *The supply of audit services is provided, or required to be provided, by Aus Co to US Sub, which has no presence in Australia. Therefore, the supply is required to be provided to US Sub outside Australia. As the supply is provided or is required to be provided to US Sub outside Australia, effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is therefore satisfied.*

597. *The supply by Aus Co to US Sub is therefore GST-free under item 3.*[133]

Further examples

598. GSTR 2005/6 provides further examples which illustrate the application of item 2 and subsection 38-190(3) to global supply arrangements. GSTR 2005/6 also discusses, by way of those examples, the application of:

- subsection 9-25(5) – supplies of anything, other than goods or real property, connected with Australia; and
- Division 84 – offshore supplies other than goods or real property.

599. These examples are summarised in the tables below and we illustrate the GST treatment of these supplies under item 3 (and item 2 for comparison purposes). It can be seen that the GST outcome under each of these items is the same.

600. For further details of the supplies you should refer to the examples in GSTR 2005/6. Cross references are given in the table.

[133] Ibid.

E.g. #	Global supply of audit services involving due diligence services *(Per Example 48, paragraphs 762 to 787, GSTR 2005/6)*	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
70	*The facts and circumstances* • A US resident parent company, US Co, engages a US accounting firm to supply audit services to the world-wide company group. The US accounting firm charges US Co on a monthly basis for services rendered in the immediately preceding month. Neither US Co, nor the US accounting firm, carry on business in Australia through a place of business of its own or through an agent acting on its behalf. • Aus Sub, an Australian subsidiary of US Co, requires audit services – in particular a due diligence service for a possible business acquisition. The US accounting firm contracts with an Australian resident accounting firm for the provision of audit services to Aus Sub. • US Co is billed by the US accounting firm for the audit services provided to the Australian subsidiary. US Co charges Aus Sub for the cost of the audit				
	The GST treatment of the supply by US accounting firm to US Co • Refer the columns opposite. • The supply by the US accounting firm of audit services to US Co is partly done in Australia. The thing, the audit service, is partly performed in Australia. The supply is, therefore, partly connected with Australia under paragraph 9-25(5)(a). • The supply by US accounting firm is a taxable supply to the extent that the other requirements of section 9-5 are met. However, the supply is not a taxable supply to the extent that it is GST-free. *The GST treatment of the supply by Australian accounting firm to US accounting firm* • Refer the columns opposite. • The GST treatment is the same as the supply by the US accounting firm to US Co.	**No** as ss38-190(3) negates the GST-free status under item 2	**Aus Sub** as Aus Sub is the entity to which the supply is provided	**does not take place outside Australia** as the supply is provided to Aus Sub in Australia	**No**
	The GST treatment of the supply by US Co to Aus Sub • Refer the columns opposite. • The example explains that the supply of audit services by US Co to Aus Sub is performed in Australia, albeit by subcontractors. The supply is, therefore, connected with Australia under paragraph 9-25(5)(a). • The supply by US Co is a taxable supply to the extent that the other requirements of section 9-5 are met. However, the supply is not a taxable supply to the extent that it is GST-free.	**No** does not apply as Aus Sub is a resident entity	**Aus Sub** as the supply is made and provided to Aus Sub	**does not take place outside Australia** as the supply is provided to Aus Sub in Australia	**No**

E.g. #	Global supply of general accounting services *(Per Example 49, paragraphs 789 to 810, GSTR 2005/6*	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
71	*The facts and circumstances* • Swiss Co, a Swiss resident parent company for a world-wide group, contracts with a Swiss accounting firm for that firm to arrange for the preparation of tax returns of its foreign subsidiaries to meet the tax law requirements of each of the countries in which a subsidiary is incorporated. • The Swiss accounting firm arranges for the Australian tax return to be prepared for Aus Sub, the Australian subsidiary of Swiss Co, by an Australian resident accounting firm. • The Australian accounting firm contracts with Aus Sub to supply to it taxation return preparation services. Aus Sub pays the Australian accounting firm for the tax return preparation services. • Neither Swiss Co, nor the Swiss accounting firm, carry on business in Australia through a place of business of its own or through an agent acting on its behalf.				
	The GST treatment of the supply by Swiss accounting firm to Swiss Co • Refer the columns opposite. • The Swiss accounting firm makes a supply of arranging services to Swiss Co as it arranges for the Australian accounting firm to enter into a contract with Aus Sub to provide tax return preparation services. *The GST treatment of the supply by Swiss Co to Aus Sub* • Refer the columns opposite. • Swiss Co supplies an arranging service to Aus Sub. Pursuant to that arrangement, Swiss Co has arranged through a Swiss accounting firm for tax return preparation services to be supplied to Aus Sub. Swiss Co makes a cost allocation to Aus Sub for the arranging service which is bundled up in the form of a management fee.	**Not applicable** as the supply is not connected with Australia			**Not applicable** as the supply is not connected with Australia
	The GST treatment of the supply by Australian accounting firm to Swiss accounting firm • Refer the columns opposite. • The Australian accounting firm has entered into an obligation to supply tax return preparation services to Aus Sub. The entering into an obligation to do anything is a supply (subparagraph 9-10(2)(g)(i)). • The supply of the obligation is made and provided to the Swiss accounting firm.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**Swiss account-ing Firm** as the supply is made and provided to the Swiss Accounting firm	**takes place outside Australia** as the supply is provided to the Swiss Accounting Firm outside Australia	**Yes**
	The GST treatment of the supply by Australian accounting firm to Aus Sub • Refer the columns opposite. • The Australian accounting firm enters into a separate contract with Aus Sub under which it supplies the tax return preparation services.	**No** does not apply as Aus Sub is a resident entity	**Aus Sub** as the supply is made and provided to Aus Sub	**does not take place outside Australia** as the supply is provided to Aus Sub in Australia	**No**

E.g. #	Global supply of general accounting services *(Per Example 50, paragraphs 812 to 831, GSTR 2005/6)*	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
72	*The facts and circumstances* • UK Co, a UK resident parent company for a world-wide group, has agreed with each of its subsidiaries, including the Australian subsidiary, Aus Sub, to supply general accounting services to the subsidiaries addressing the specific needs of each subsidiary. Aus Sub pays a fee to its parent in consideration for the accounting services. • UK Co contracts with a UK accounting firm for the supply of accounting services to the world-wide subsidiaries of UK Co. The UK accounting firm in turn contracts with an Australian resident accounting firm to meet the general accounting requirements of Aus Sub. • Neither UK Co, nor the UK accounting firm, carry on business in Australia through a place of business of its own or through an agent acting on its behalf.				
	The GST treatment of the supply by UK accounting firm to UK Co • Refer the columns opposite. • The general accounting services for Aus Sub are performed in Australia (under a subcontract arrangement with an Australian accounting firm). The supply is connected with Australia to the extent that the accounting services are performed in Australia (paragraph 9-25(5)(a)). *The GST treatment of the supply by Australian accounting firm to UK accounting firm* • Refer the columns opposite. • The Australian accounting firm makes a supply of general accounting services to the UK accounting firm.	**No** as ss38-190(3) negates the GST-free status under item 2	**Aus Sub** as the accounting services are required to be provided to Aus Sub	**does not take place outside Australia** as the supply is provided to Aus Sub in Australia	**No**
	The GST treatment of the supply by UK Co to Aus Sub • Refer the columns opposite. • UK Co supplies accounting services to Aus Sub to meet an identified need of Aus Sub. • The supply of general accounting services is made by UK Co to Aus Sub. The supply is connected with Australia because the services are performed in Australia (paragraph 9-25(5)(a)).	**No** does not apply as Aus Sub is a resident entity	**Aus Sub** as the accounting services are required to be provided to Aus Sub	**does not take place outside Australia** as the supply is provided to Aus Sub in Australia	**No**

E.g. #	Global supply of data processing and IT services *(Per Example 51, paragraphs 833 to 859, GSTR 2005/6)*	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
73	*The facts and circumstances* • A non-resident US company, US Fin Services Co, the parent company of a global financial services (investment banking, asset management etc) group contracts with a US IT company (US IT Co) for the supply of global data processing and IT services. • US Fin Services Co has a subsidiary in Australia, Aus Fin Services Co, which supplies financial services in Australia. US IT Co also has a subsidiary in Australia, Aus IT Co. • Neither US Fin Services Co, nor US IT Co, carries on business in Australia either through a place of business of its own or through an agent acting on its behalf. Aus Fin Services Co, is not the agent of US Fin Services Co in Australia. Aus IT Co is not the agent of US IT Co in Australia. • The data processing service supplied by US IT Co involves collecting financial data from the world-wide financial services group, including Aus Fin Services Co, processing that data (which occurs outside of Australia), and providing the processed data to US Fin Services Co. • The IT service supplied by US IT Co involves the development of software products, the copyright in which is assigned, upon completion, to US Fin Services Co. • US IT Co contracts with its Australian resident subsidiary, Aus IT Co, to collect data from Aus Fin Services Co. To perform this data collection service, Aus IT Co installs and maintains certain hardware at the premises of Aus Fin Services Co. After the raw data has been collected, Aus IT Co sends the data offshore to US IT Co. • US IT Co processes all the data collected world-wide to convert it to a form that is required by US Fin Services Co. US IT Co sends this processed data to US Fin Services Co. • US Fin Services Co analyses this processed data and from this builds customised management reports for its world-wide subsidiaries, including Aus Fin Services Co. US Fin Services Co charges a fee to Aus Fin Services Co for the supply of the management reports. Aus Fin Services Co is registered for GST and uses the reports in analysing the performance of its financial supply business. • US Fin Services Co also brings together the various software products that have been supplied to it by US IT Co. US Fin Services Co makes the software products available to its subsidiaries under a licensing agreement in return for payment.				

E.g. #	Global supply of data processing and IT services *(Per Example 51, paragraphs 833 to 859, GSTR 2005/6)*	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
73 Cont'd	*The GST treatment of the supply of data collection and processing services by US IT Co to US Fin Services Co* • Refer the columns opposite. • The supply of data collection and processing services involves the collection of data from the world-wide financial services subsidiaries including Aus Fin Services Co. Some of the data collection is performed in Australia under a subcontract arrangement with Aus IT Co (that is, the collection of data relating to Aus Fin Services Co is done by Aus IT Co pursuant to a contract between US IT Co and Aus IT Co). The data processing services are not performed in Australia. Therefore, the supply is connected with Australia to the extent that the data collection services are performed in Australia. • The supply by US IT Co is a taxable supply to the extent that the other requirements of section 9-5 are met. However, the supply is not a taxable supply to the extent that it is GST-free.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**US Fin Services Co** as the supply is both made and provided to US Fin Services Co	**takes place outside Australia** as the supply is provided to US Fin Services Co outside Australia	**Yes**
	The GST treatment of the supply of IT services by US IT Co to US Fin Services Co • Refer the columns opposite. • The development and supply of the computer program are done outside Australia. The copyright is assigned outside Australia. None of these supplies are made through an enterprise carried on in Australia. The supply is not, therefore, connected with Australia • Note: A computer program is essentially encoded instructions designed to cause a computer to perform a particular task or to produce a particular result. It is, in substance, knowledge or information (that is, intellectual property). We therefore consider that the supply of the computer program is the supply of information. As the supply of information involves work to develop that information, the supply is one of the performance of a service. The computer program/supply of information is therefore 'done' where the information is developed. *The GST treatment of the supply of management reporting services by US Fin Services Co to Aus Fin Services Co* • Refer the columns opposite. • If the supply is a service of analysing the processed data and developing management reports for Aus Fin Services Co to use, those services are done where the services are performed. As this service is performed outside Australia, the supply of management reports is not connected with Australia. • However, because Aus Fin Services Co makes financial supplies (that is, its acquisition of the management reports is for the purposes of its enterprise but is not solely for a creditable purpose), provides consideration for the supply of the management reports and is registered for GST, Division 84 applies to the supply.	**Not applicable** as the supply is not connected with Australia			**Not applicable** as the supply is not connected with Australia

E.g. #	Global supply of data processing and IT services *(Per Example 51, paragraphs 833 to 859, GSTR 2005/6)*	Is supply GST-free under item 2?	Entity that uses or enjoys the supply…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
73 Cont'd	*The GST treatment of the supply of software licences by US Fin Services Co to Aus Fin Services Co* • Refer the columns opposite. • Division 84 applies to the supply. The supply of the computer program is the supply of information. This supply is an instantaneous supply of information done in the US and is not done through an enterprise carried on in Australia. The supply is not connected with Australia.	**Not applicable** as the supply is not connected with Australia			**Not applicable** as the supply is not connected with Australia
	The GST treatment of the supply by Aus IT Co to US IT Co • Refer the columns opposite. • The supply of data collection services by Aus IT Co to US IT Co.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**US IT Co** as the supply is both made and provided to US IT Co	**takes place outside Australia** as the supply is provided to US IT Co outside Australia	**Yes**

Your comments

601. We invite you to comment on this draft Goods and Services Tax Ruling. Please forward your comments to the contact officer(s) by the due date. (Note: The Tax office prepares a compendium of comments for the consideration of the relevant Rulings Panel. The Tax Office may use a sanitised version (names and identifying information removed) of the compendium in providing its responses to persons providing comments. Please advise if you do not want your comments included in a sanitised compendium.)

Due date:	**14 April 2006**
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Commissioner of Taxation
1 March 2006

Previous drafts:

Not previously issued as a draft

Related Rulings/Determinations:

GSTR 1999/1; GSTR 2000/31; GSTR 2001/8; GSTR 2003/7; GSTR 2003/8; GSTR 2004/7; GSTR 2005/2; GSTR 2005/6
GSTR 2000/19

Subject references:

- exported services
- GST-free supplies
- services
- supplies of things other than goods or real property
- taxable supplies

Legislative references:

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